

No. 11227 *v. 8439*

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

MECHANICAL FARM EQUIPMENT DIS-  
TRIBUTORS, INC., a Corporation,  
Appellant,

vs.

CHESTER BOWLES, Administrator, Office of  
Price Administration,  
Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

**FILED**  
FEB 23 1948

PAUL P. O'BRIEN,  
CLERK



No. 11227

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

MECHANICAL FARM EQUIPMENT DIS-  
TRIBUTORS, INC., a Corporation,  
Appellant,

vs.

CHESTER BOWLES, Administrator, Office of  
Price Administration,  
Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division



## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Additional Designation by Defendant and Appellant .....	94
Amended Answer to Amended Complaint.....	7
Amended Complaint for Injunction and Treble Damages .....	2
Appeal:	
Additional Designation on (DC) .....	94
Certificate of Clerk to Transcript of Record on .....	95
Counter Designation of Contents of Record on (DC) .....	93
Designation of Record on (DC).....	90
Notice of .....	22
Order Waiving Printing of Original Exhibits on .....	99
Orders Extending Time to Docket....	94, 95
Statement of Points on (DC).....	89
Statement of Points and Designation of Record on (CCA) .....	97
Certificate of Clerk to Transcript of Record on Appeal .....	95

ii. *Mech. Farm Equipt. Distributors, Inc.*

INDEX	PAGE
Complaint, Amended .....	2
Counter Designation of Contents of Record on Appeal .....	93
Deposition of Walter Shoemaker (Plaintiff's Exhibit No. 5) .....	88
Designation of Record on Appeal (DC).....	90
Designation of Record, Statement of Points and (CCA) .....	97
Findings of Fact and Conclusions of Law.....	16
Interrogatories to Plaintiff and Answer to Interrogatories, Defendant's .....	5
Judgment .....	15
Motion to Dismiss .....	12
Names and Addresses of Attorneys.....	1
Notice of Appeal .....	22
Orders Extending Time to Docket .....	94, 95
Order for Judgment .....	14
Order Waiving Printing of Original Exhibits	99
Statement of Points Upon Which Appellant Will Rely on Appeal (DC) .....	89
Statement of Points and Designation of Record on Appeal (CCA) .....	97
Stipulation of Facts .....	11
Transcript of Testimony (Excerpts) .....	23

	INDEX	PAGE
Exhibit for Defendant:		
H—Letter from San Francisco District Office of the OPA signed by Charles E. Sweet, Price Specialist, enclosing Questions and Answers re Maxi- mum Price Regulation 133 . . . . .		58
Exhibit for Plaintiff:		
5—Deposition of Walter Shoemaker..		88
Witnesses for Plaintiff:		
Clapp, Austin, —rebuttal, direct . . . . .		84
Smith, Verna M. —direct . . . . .		23, 41
Witnesses for Defendant:		
Delfino, J. R. —direct . . . . .		47, 52
Odlin, Cyril M. —direct . . . . . —cross . . . . .		78 79
Smith, Verna M. —recalled, direct . . . . . —cross . . . . .		54 71





NAMES AND ADDRESSES OF ATTORNEYS

HOWE & FINCH,

261 Hamilton Avenue,

Palo Alto, California.

Attorneys for Appellant.

W. H. BRUNNER,

RALPH GOLUB,

HERBERT H. BENT,

1355 Market Street,

San Francisco, California.

Attorneys for Appellee.

In the District Court of the United States  
Northern District of California  
Southern Division

No. 23549 R

CHESTER BOWLES, Administrator, Office of  
Price Administration,

Plaintiff,

vs.

MECHANICAL FARM EQUIPMENT DISTRI-  
BUTORS, INC., a corporation, 1702 South  
First Street, San Jose, California,

Defendant.

AMENDED COMPLAINT FOR INJUNCTION  
AND TREBLE DAMAGES

Count One

1. In the judgment of the Price Administrator, the defendant engaged in actions and practices which constituted a violation of Section 4(a) of the Emergency Price Control Act of 1942 (Pub. Law 421, 77th Cong. 2d Sess., c. 26, 56 Stat. 23), as amended, hereinafter called "the Act", in that defendant violated Maximum Price Regulation No. 133 and Maximum Price Regulation No. 136, both as amended and revised, effective in accordance with the provisions of the Act, establishing under Maximum Price Regulation No. 133 maximum prices for the sale of farm equipment at retail, and under Maximum Price Regulation No. 136 maximum

prices for the sale of machines and [1\*] parts and machinery services.

2. Jurisdiction of this action is conferred upon this Court by Sections 205(c) and 205(e) of the Act.

3. From and including the 11th day of May, 1942, there has been in effect, pursuant to the Act, Maximum Price Regulation No. 133, as amended and revised, establishing maximum prices for the sale of farm equipment at retail; from and including July 22, 1942, there has been in effect, pursuant to the Act, Maximum Price Regulation No. 136, as amended and revised, establishing maximum prices for the sale of machines and parts and machinery services.

4. Subsequent to the 1st day of August, 1943, the defendant, doing business in the City of San Jose, County of Santa Clara, State of California, sold, offered to sell, and continues to sell and offer for sale, farm tractors, both wheel and crawler types, at prices in excess of the maximum prices permitted by said Maximum Price Regulation No. 133 and Maximum Price Regulation No. 136, both as amended and revised.

### Count Two

1. The allegations set forth in Paragraphs 1, 2, 3 and 4 of Count One herein are incorporated by reference as if fully set forth.

2. None of the said purchases was made for use

---

\*Page numbering appearing at foot of page of original certified Transcript of Record

or consumption other than in the course of trade or business; the defendant has demanded and received a price or consideration for wheel type tractors and crawler type tractors sold by it in excess of the maximum prices established therefor under Maximum Price Regulation No. 133 and Maximum Price Regulation No. 136, both as amended and revised.

3. Three times the aggregate amount by which the prices received by the defendant in the transactions referred to in Paragraph 4 of Count One and as incorporated in Paragraph 1 of this Count and as referred to in Paragraph 2 of this Count, [2] exceeds the maximum prices provided by Maximum Price Regulation No. 133 and Maximum Price Regulation No. 136, both as amended and revised, equals Seventeen Thousand, Six Hundred and Fifty-Six and 11/100 Dollars (\$17,656.11).

Wherefore, the Price Administrator demands:

1. A final injunction enjoining defendant, its agents, employees, servants and attorneys, and all persons in active concert or participation with them, from:

Directly or indirectly selling, delivering, or offering for sale or delivery, any wheel type tractor or crawler type tractor at prices in excess of those established by Maximum Price Regulation No. 133 or Maximum Price Regulation No. 136, both as amended or revised, or otherwise violating or attempting or agreeing to do anything in violation

of said Regulations, or in violation of any regulation or order adopted pursuant to the Emergency Price Control Act of 1942, as amended or revised, establishing maximum prices for wheel type tractors or crawler type tractors.

2. Judgment on behalf of the United States of America against the defendant in the sum of Seventeen Thousand Six Hundred Fifty-Six and 11/100 Dollars (\$17,656.11).

3. Such other, further and different relief as to the Court may seem just and proper in the premises.

(Signed)            THOMAS C. RYAN.

(Signed)            GEO. A. FARADAY.

(Acknowledgment of Receipt of Service.)

[Endorsed]: Filed Oct. 5, 1944. [3]

---

[Title of Court and Cause.]

DEFENDANT'S INTERROGATORIES TO  
PLAINTIFF AND ANSWER TO INTER-  
ROGATORIES

Pursuant to Rule 33 of the Rules of Civil Procedure, defendant hereby serves upon plaintiff interrogatories to be answered by plaintiff in accordance with said rule as follows:

Interrogatory No. 1. State the name of each person to whom it is alleged in the Amended Complaint sales of tractors were made by defendant in excess

of the maximum prices permitted and, as to each such sale state also the following:

- (a) The date on which such sale was made;
- (b) The make, model and type of tractor sold;
- (c) The maximum price which it is contended was established with respect to defendant as to such sale;
- (d) The amount by which the price charged by defendant exceeded the established maximum price.

Answer to Interrogatory No. 1. Exhibit "A" hereto attached and made a part hereof, sets forth with respect to each sale of a tractor alleged in the amended complaint to have been made at a price in excess of the established maximum price: the name of the purchaser; the date of the sale; the make, model and type of tractor; the established maximum price; the amount by which the sale price exceeded the established maximum price. [4]

Interrogatory No. 2. State names of plaintiff's witnesses to be produced on trial of this case.

Answer to Interrogatory No. 2. On the trial of this case plaintiff will produce as witnesses, Rodman Bingham, Harry Oltmans and Douglas Forsyth, all of whom are employed as investigators by the Office of Price Administration.

(Affidavit of mailing attached to Defendant's Interrogatories.)

(Verification and Receipt of Service attached to Answer to Interrogatories.)

Defendant's Interrogatories Filed Oct. 16, 1944.

Answer to Interrogatories Filed Dec. 12, 1944.

(Here Follows Exhibit "A" Attached to Answer to Interrogatories.) [5]

---

[Title of Court and Cause.]

AMENDED ANSWER TO AMENDED  
COMPLAINT

Defendant answers the Amended Complaint as follows:

ANSWERING COUNT ONE THEREOF

I.

Admits the allegations of paragraphs 2 and 3 thereof.

II.

Denies each and all of the allegations contained in paragraphs 1 and 4 thereof.

ANSWERING COUNT TWO THEREOF

I.

Answering paragraph 1 thereof, defendant refers to, incorporates herein and makes a part hereof its admissions and denials contained in paragraphs 1 and 2 of its answer to count one of the amended complaint.

II.

Denies each and all of the allegations of paragraph 2 thereof.

## III.

Denies each and every allegation contained in paragraph 3 thereof.

## FIRST SEPARATE DEFENSE

## I.

Defendant is, and since 1941 has been, engaged in the business of selling and servicing new and used farm equipment with substantial investment in buildings, shops and equipment to conduct said business and subject to substantial sums of indebtedness thereon.

## II.

In its business operations defendant has been subject to numerous regulations governing its prices for sales and services as well as other war regulations affecting the conduct of its business. Said price regulations purport to fix a large [6] number of prices according to complicated and changing formulae, the meaning of which is obscure, and have been frequently changed and amended.

## III.

Said regulations and amendments have made material changes in the business methods followed by defendant prior to their adoption. To the best of its ability defendant has endeavored to comply with said regulations but, by reason of lack of knowledge or misunderstanding of the provisions thereof and changes therein, mistakes resulting in violations of said regulations may have occurred. None of such mistakes and overcharges resulting



therefrom, if any, were wilful on the part of defendant and, to the best of its ability, defendant took all practicable precautions within its ability against the occurrence of such violations. Defendant has now corrected and such erroneous practices and is diligently complying with said regulations to the best of its ability.

## SECOND SEPARATE DEFENSE

### I.

Defendant is informed and believes and on such information and belief alleges that the amounts of overcharge alleged in plaintiff's complaint are based upon the difference between the maximum price prescribed in said regulations for used unguaranteed tractors and used reconditioned and guaranteed tractors.

### II.

As amended, said regulations require that to be considered as reconditioned and guaranteed the seller must furnish the purchaser with a guarantee in writing. As originally promulgated the guarantee was not required to be in writing.

### III.

Prior to the issuance of said regulations the defendant sold used tractors on the basis of informal oral guarantees and without intent to violate said regulations continued to so do. [7]

### IV.

Each and every tractor sold by the defendant as

and for the price of a reconditioned and guaranteed tractor was in fact reconditioned by defendant at substantial cost and was accompanied by a binding oral guarantee for the period specified in the regulations. Any violation which occurred by reason of the failure to make such guarantee in writing did not affect the status of the tractors as actually reconditioned and bindingly, though orally guaranteed.

### THIRD SEPARATE DEFENSE

#### I.

The sales of crawler tractors made by defendant to farmers were sales at retail and not subject to Maximum Price Regulation 136.

### FOURTH SEPARATE DEFENSE

#### I.

Any violations of said regulations which may have occurred in the past have been corrected. Equity does not require the issuance of an injunction to prohibit acts which are not likely to occur in the future.

Defendant therefore prays judgment that plaintiff take nothing by reason of said Amended Complaint.

HOWE & FINCH

By NATHAN C. FINCH

Attorneys for Defendant.

(Affidavit of Mailing.)

[Endorsed]: Filed Nov. 2, 1944. [8]

[Title of Court and Cause.]

STIPULATION

It is stipulated by and between the parties as follows:

1. That in the period between August 1, 1943 and September 25, 1943, C. G. Hayes, A. Antichi, E. J. Grecian, Charles J. Freitas, C. C. Batten, T. J. Badami, H. S. Brinkerhoff, Carl E. Priest, Louis Montes, John Fong, Thos. D. Teresi, I. G. Buyak and H. R. Van Horn purchased tractors from defendant above named.

2. That, with the exception of H. R. Van Horn, each of the above named purchasers was a farmer at the times of their respective purchases and that they purchased said tractors from defendant and defendant sold said tractors to said farmers for the purpose of using said tractors on the farmers or orchards of said purchasers in the cultivation of the soil and in general farming and agricultural uses incident to the raising of agricultural crops by the purchasers.

3. That the tractor sold to H. R. Van Horn was purchased and sold for use by the purchaser in lumbering operations in the Santa Cruz Mountains of California.

4. That none of said purchasers herein named was in the business of selling tractors and that each of said purchasers purchased their respective tractors from defendant for use by the purchaser as aforesaid.

5. That the several sales of tractors set forth in pages 1 to 9, inclusive, of Exhibit "A" attached to plaintiff's Answer to Interrogatories filed in the above-entitled action were made by defendant at the prices therein set forth and involved the several overcharges totalling \$198.60, therein set forth.

6. That none of the purchases or sales mentioned in plaintiff's Amended Complaint and more particularly set forth [9] in Plaintiff's Answer to Interrogatories filed in the above-entitled action, was made for use and consumption other than in the course of trade or business.

Dated: February 27, 1945.

W. H. BRUNNER

RALPH GOLUB

RALPH W. MORTENSON

Attorneys for Plaintiff

HOWE & FINCH

By NATHAN C. FINCH

Attorneys for Defendant

[Endorsed]: Filed March 3, 1945. [10]

---

[Title of Court and Cause.]

### MOTION TO DISMISS

Defendant moves the Court:

For an order dismissing the action because the evidence as stipulated herein fails to show a claim against defendant upon which relief can be granted plaintiff.

The particulars wherein said evidence fails to state a claim are as follows:

The two regulations involved herein are Maximum Price Regulation 133 and Maximum Price Regulation No. 136. The stipulation of the parties shows that defendant sold tractors and other farm equipment to farmers for the purpose of using the same on the farms or orchards of the purchasers in the cultivation of the soil and in general farming and agricultural uses incident to the raising of agricultural crops by the purchasers, except the sale to H. R. Van Horn which was a sale for use in lumbering operations and that none of the purchases were made for resale or for use other than as aforesaid.

It is defendant's position that under such facts only the respective purchasers and not the plaintiff, administrator, are entitled to bring an action under the Act and that the plaintiff has no right to sue herein.

(Here Follows Memorandum in Support of Motion to Dismiss.)

Respectfully submitted,

**HOWE & FINCH**

By **NATHAN C. FINCH**

Attorneys for Defendant.

Dated: April 12, 1945.

[Endorsed]: Filed April 12, 1945. [11]

In the Southern Division of the United States District Court for the Northern District of California.

No. 23549-G

CHESTER BOWLES, Administrator, Office of  
Price Administration,

Plaintiff,

vs.

MECHANICAL FARM EQUIPMENT DISTRIBUTORS, INC.,

Defendant.

### ORDER FOR JUDGMENT

I have concluded that M.P.R. 136 applies to the items, as to which defendant claims it is inapplicable. The evidence satisfies me that recovery should be limited to the actual overcharges. Therefore judgment will go for plaintiff in the sum of \$4469.20 as per the schedule attached hereto and for a permanent injunction as prayed.

Prepare findings pursuant to the rules.

Dated: July 10, 1945.

LOUIS E. GOODMAN,

United States District Judge.

#### Schedule of Overcharges

( 4)	Antichi sale .....	\$ 78.75
( 5)	Van Horn sale.....	229.75
(10)	Grecian sale .....	315.00

(11)	Freitas sale .....	905.00
(12)	Batten sale .....	306.40
(13)	Badami sale .....	440.25
(16)	Priest sale .....	717.25
(18)	Fong sale .....	103.75
(19)	Teresi sale .....	1045.21
(20)	Buyak sale .....	128.75
	Miscellaneous sales .....	198.68
		<hr/>
		\$4469.29

[Endorsed]: Filed July 11, 1945. [13]

[Title of Court and Cause.]

### JUDGMENT

The above-entitled cause of action came on regularly for trial on the Fourteenth Day of June, 1945, before the Honorable Louis E. Goodman, Judge of the United States District Court, without a jury, plaintiff being represented by Ralph Golub, Esquire, and defendant being represented by Nathan C. Finch, Esquire; said trial was had on the pleadings of the parties duly made and filed herein, to wit: Complaint of the plaintiff and answer of the defendant, and the Court having heard the testimony and having examined the evidence offered by the respective parties, and the cause having been submitted to the Court for decision, and the Court being duly advised in the premises therefor,

It Is Ordered, Adjudged and Decreed that:

1. The defendant herein, its officers, agents, em-

ployees, and attorneys, and all persons in active concert or participation with the defendant, are enjoined from directly or indirectly selling, delivering, or offering for sale or delivery machines and parts at prices in excess of those established by Maximum Price Regulation 136, as amended and revised, and farm machinery and equipment at prices in excess of those established by Maximum Price Regulation 133, as amended, or otherwise violating or attempting or agreeing to do anything in violation of said Regulations.

2. Defendant pay to plaintiff on behalf of the United States the sum of \$4,469.29.

Dated: August 23rd, 1945.

LOUIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed Aug. 23, 1945. [14]

---

[Title of Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above-entitled cause of action came on regularly for trial on the Fourteenth Day of June, 1945, before the Honorable Louis E. Goodman, Judge of the United States District Court, without a jury, plaintiff being represented by Ralph Golub, Esquire, and defendant being represented by Nathan C. Finch, Esquire. Said trial was had



on the pleadings of the party duly made and filed herein to wit: Complaint of the plaintiff and answer of the defendant, and the Court having heard the testimony and having examined the evidence offered by the respective parties, and the cause having been submitted to the Court for decision, and the Court being duly advised in the premises, the Court hereby finds as follows:

1. Jurisdiction of this action is conferred upon this Court by Sections 205 (c) and 205 (e) of the Emergency Price Control Act of 1942, as amended, hereinafter called the "Act."

2. At all times hereafter mentioned, there has been in full force and effect Maximum Price Regulation 133 (7 F. R. 3185), as amended, issued pursuant to Section 2 of the Act, establishing maximum prices for farm equipment.

3. At all times hereafter mentioned, there has been in full force and effect Maximum Price Regulation 136 (8 F. R. 16132), as amended, issued pursuant to Section 2 of the Act, establishing maximum prices for machinery and transportation equipment.

4. At all times hereafter mentioned, defendant has been and now is engaged in business in the City of San Jose, County of Santa Clara, State of California, as a dealer selling and offering to sell farm equipment for which maximum prices are [15] and were at all times herein mentioned established by Maximum Price Regulation 133 (7 F. R. 3185), as

amended, and machines and parts and also machinery services for which maximum prices are and were at the times herein mentioned established by Maximum Price Regulation 136 (8 F. R. 16132), as amended.

5. On the Twenty-seventh Day of August, 1943, said defendant sold and delivered to A. Antichi a used caterpillar "15" tractor, Serial No. PV3387, for the sum of \$1,000.00. On said date, the maximum price for which said used caterpillar "15" tractor, Serial No. PV3387, could have been legally sold under Maximum Price Regulation 136 (8 F. R. 16132), as amended, was the sum of \$921.25.

6. On the Twentieth Day of August, 1943, said defendant sold and delivered to H. R. Van Horn a used caterpillar "RD4" tractor, Serial No. 4G204, for the sum of \$2,750.00. On said date, the maximum price for which said used caterpillar "RD4" tractor, Serial No. 4G204, could have been legally sold under Maximum Price Regulation 136 (8 F. R. 16132), as amended, was the sum of \$2,520.25.

7. On the Fourth Day of September, 1943, said defendant sold and delivered to E. C. Grecian a used Cletrac "20G" tractor, Serial No. 13802, for the sum of \$1,250.00. On said date, the maximum price for which said used Cletrac "20G" tractor, Serial No. 13802, could have been legally sold under Maximum Price Regulation 136 (8 F. R. 16132), as amended, was the sum of \$935.00.

8. On the Eleventh Day of September, 1943, said

defendant sold and delivered to Charles J. Freitas a used Cletrac "AD2" tractor, Serial No. 4N26, for the sum of \$2,115.00. On said date, the maximum price for which said used Cletrac "AD2" tractor, Serial No. 4N26, could have been legally sold under Maximum Price Regulation 136 (8 F. R. 16132), as amended, was the sum of \$1,210.00.

9. On the Twenty-third Day of September, 1943, said defendant sold and delivered to C. C. Batten, a used Oliver Standard "60" tractor, Serial No. 410353, for the sum of \$1,000.00. On [16] said date, the maximum price for which said used Oliver Standard "60" tractor, Serial No. 410353, could have been legally sold under Maximum Price Regulation 133 (7 F. R. 3185), as amended, was the sum of \$693.60.

10. On the Thirteenth Day of November, 1943, said defendant sold and delivered to T. J. Badame a used Cletrac "AG" tractor, Serial No. 19450, for the sum of \$1,400.00. On said date, the maximum price for which said used Cletrac "AG" tractor, Serial No. 19450, could have been legally sold under Maximum Price Regulation 136 (8 F. R. 16132), as amended, was the sum of \$959.75.

11. On the Eighth Day of October, 1943, said defendant sold and delivered to Carl E. Priest a used caterpillar "25" tractor, Serial No. 3C268, for the sum of \$1,650.00. On said date, the maximum price for which said used caterpillar "25" tractor,

Serial No. 3C268, could have been legally sold under Maximum Price Regulation 136 (8 F. R. 16132), as amended, was the sum of \$932.25.

12. On the Twenty-first Day of October, 1943, said defendant sold and delivered to John Fong a used caterpillar "15" tractor, Serial No. PV7032, for the sum of \$1,025.00. On said date, the maximum price for which said used caterpillar "15" tractor, Serial No. PV7032, could have been legally sold under Maximum Price Regulation 136 (8 F. R. 16132), as amended, was the sum of \$921.25.

13. On the Twenty-third Day of October, 1943, said defendant sold and delivered to Thomas D. Teresi a used caterpillar "50" tractor, Serial No. IE382, for the sum of \$3,500.00. On said date, the maximum price for which said used caterpillar "50" tractor, Serial No. IE382, could have been legally sold under Maximum Price Regulation 136 (8 F. R. 16132), as amended, was the sum of \$2,454.79.

14. On the Twenty-fifth Day of October, 1943, said defendant sold and delivered to I. G. Buyak a used caterpillar "15" [17] tractor, Serial No. PV-4974, for the sum of \$1,050.00. On said date, the maximum price for which said used caterpillar "15" tractor, Serial No. PV4974, could have been legally sold under Maximum Price Regulation 136 (8 F. R. 16132), as amended, was the sum of \$921.25.

15. Each of the aforesaid purchasers with the exception of H. R. Van Horn was a farmer at the

times of their respective purchases, and they purchased said tractors from defendant and defendant sold said tractors to said farmers for the purpose of using said tractors on the farms or orchards of said purchasers in the cultivation of the soil and in general farming and agricultural uses incident to the raising of agricultural crops by the purchasers. The tractor sold to H. R. Van Horn was purchased and sold for use by the purchaser in lumbering operations.

16. None of the aforesaid purchases was made for use or consumption other than in the course of trade or business.

17. Defendant's violations were neither wilful nor the result of failure to take practicable precautions against the occurrence of violations and hence the damages allowed will be the amount of the overcharges.

## CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts, the Court finds:

1. Maximum Price Regulation 136, as amended, applies to the items as to which plaintiff claims it is applicable.

2. Plaintiff is entitled to a permanent and final injunction enjoining the defendant, its officers, agents, employees, and attorneys, and all persons in active concert or participation with the defendant, from directly or indirectly selling, delivering,

or offering for sale or delivery machines and parts at prices in excess of those established by Maximum Price Regulation 136, as amended and revised, and farm machinery and equipment at prices in excess of those established by Maximum Price Regulation [18] 133, as amended, or otherwise violating or attempting or agreeing to do anything in violation of said Regulations.

3. Plaintiff is entitled to judgment against the defendant in accordance with Count Two of the Complaint, for damages pursuant to Section 205 (e) of the Emergency Price Control Act of 1942, as amended, by reason of the transactions set forth in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the Findings of Fact in the sum of \$4,469.29.

Let judgment be entered accordingly.

Dated this 23rd day of August 1945.

LOUIS E. GOODMAN,  
United States District Judge.

(Acknowledgement of Service.)

[Endorsed]: Filed Aug. 23, 1945. [19]

---

[Title of Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT  
OF APPEALS

Notice is hereby given that Mechanical Farm Equipment Distributors, Inc., a California Corporation, the defendant above named, hereby appeals

to the Circuit Court of Appeals of the United States for the Ninth Circuit from the final judgment and the whole thereof which was entered in this action on the 23rd day of August, 1945, in favor of plaintiff and against defendant.

Dated: October 17th, 1945.

HOWE & FINCH.

By NATHAN C. FINCH,  
Attorneys for Defendant.

[Endorsed]: Filed Oct. 19, 1945. [20]

---

[Title of Court and Cause.]

TESTIMONY OF VERNA M. SMITH,

a witness called on behalf of the Plaintiff (Pages 25 to 49, line 22):

VERNA M. SMITH,

called by the Government; sworn.

The Clerk: Q. Please state your name to the Court.

A. Verna M. Smith.

Direct Examination

Mr. Golub: Q. Is that Miss or Mrs.?

A. Mrs.

Q. Mrs. Smith, are you the secretary of the Mechanical Farm Equipment Association?

A. I am.

(Testimony of Verna M. Smith.)

Mr. Golub: Your Honor, we are calling the defendant under Federal Rule 43 (b).

Q. Mrs. Smith, you are under subpoena?

A. Yes.

Q. You appeared here by subpoena?

A. Yes.

Q. You were requested by that subpoena to produce certain records? A. Yes.

Q. You have records showing the basis upon which maximum prices were determined at the time the products in question were sold, those sales that were covered by Maximum Price Regulation 136?

A. We have the price lists that we kept in our files on our tractors.

Q. Yes, but do you have with you the records showing the basis upon which those maximum prices were arrived at, records showing what you have taken as the nearest equivalent, for example?

A. There were no records made at the time. We never compared them with competitive models. We used our own models, what they were the nearest to, or to Caterpillar, whose models, horse power for horse power, were nearest to ours, right down the line.

Q. Are you familiar—

A. I am familiar with the different model tractors.

Q. Are you familiar with the provisions of Maximum Price Regulation 136?

A. We have to keep a record of the tractor, the cost and the things to do to it. [21]



(Testimony of Verna M. Smith.)

Q. Yes.

A. We have a perpetual inventory.

Q. Do you have a record showing how you arrived at the maximum price? In other words, do you state upon your record what the nearest equivalent machine is?

A. We did not then, no; the records we brought were the ones made at that time.

Q. During the period covered by our investigation, that is, during the periods of violations——

A. There has been nothing added to them. They are just like they were when we made them then.

Q. At that time did you keep those records?

A. Yes.

Q. The records showing the way these prices were arrived at?           A. Yes.

Q. Do those records have the nearest equivalent machine on them?           A. Not marked on them.

Q. Have you that?

A. The attorney has a sheet for each one of the cases.

Mr. Finch: What ones do you want?

Mr. Golub: I would like the record showing how the maximum prices for all the eleven items on which we claim overcharged were arrived at.

The Witness: Prices were checked thoroughly.

Mr. Finch: There aren't any records showing the method. Do you mean the comparison to the nearest equivalent?

Mr. Golub: The regulation says, "you are required to keep records showing as precisely as pos-

(Testimony of Verna M. Smith.)

sible the basis upon which maximum prices for machines and parts were sold." Now, those records would, if kept, indicate how you arrived at the maximum price for the machines. That provision was in effect at the time of these violations, your Honor, and those records would show the machine sold, the serial number, the model number, the nearest equivalent, whether it was sold as reconditioned and guaranteed.

The Court: I understand that, but I understood Counsel to say there was no such record.

Mr. Finch: We do not have a record showing a comparison with the nearest equivalent. We have here for each sale a card inventory record showing its cost. [22]

The Court: Suppose you produce in answer to the subpoena whatever record you have which you think answers the call of the subpoena.

Mr. Finch: Mine are in order. As a matter of fact, I was going to put them in. I can put them in right now.

Mr. Golub: What I am trying to find out, your Honor, is how the Mechanical Farm Equipment Company arrived at their maximum prices.

The Court: Why don't you produce one, examine the record, and you can quiz the witness from that and bring out what you want to find out.

Mr. Golub: How about Item No. 19, the sale to Teresi?

The Witness: Shall I proceed?

(Testimony of Verna M. Smith.)

Mr. Finch: I expect to put these in, your Honor.

The Court: At the moment the plaintiff wants to develop how you kept your records.

Mr. Golub: Q. I have here what purports to be card inventory record, a contract and some invoices. Could you identify those, Mrs. Smith?

A. Yes, I made those.

Q. Will you tell the Court what they are?

A. When a tractor comes in, according to our system, it is given a stock number. A different sheet is made for each piece of equipment. The cost is put here, and any work done on it is added to it as it proceeds. Then when it goes out the sheet is turned over and the record of the sale made on the other side.

Q. What do you have in that group of records regarding that one transaction, the sale to Thomas D. Teresi, which indicates how you arrived at the maximum price for the sale of that tractor?

A. There isn't anything here. All I can say is whenever we sold a competitive tractor we called the Caterpillar dealer, who is right near us there, and asked the price for that particular tractor. And we have at different times discussed with him about what is a comparable model as well. But we neither one could decide whether we should go into another line or always use the kind of tractor we were talking about. [23]

The Court: Q. So far as the record you have there is concerned, in the particular transaction

(Testimony of Verna M. Smith.)

that Counsel has referred to, that indicates only the price at which you sold the tractor?

A. And what we bought it at.

Q. The price at which you bought it. But you have no way, no data on that page you have in your hand that shows the manner in which you arrived at the selling price? A. No.

Q. Whatever selling price you arrived at you put down on that sheet and that is the extent of your record on that subject?

A. Yes. We checked them, however. Every price is checked with something.

Q. But that does not appear on the record itself? A. No.

The Court: Is that what you want to develop?

Mr. Golub: That is right, your Honor.

The Witness: That is right.

Mr. Golub: Q. Is there anything on those records that you have there, Mrs. Smith, to indicate whether or not the machine was sold as reconditioned and guaranteed?

A. This one here says "90 days guarantee" on the order line. And on the service side, where we make a record of the service—let's see, it was sold in October—pretty close to \$244 free service given on it in almost 90 days.

Q. Would you mind showing me where it says that is guaranteed?

A. 90 days guarantee here (indicating), and on this service record here is given the record of the invoices where free service was given. I marked

(Testimony of Verna M. Smith.)

that "free" in there just to show that was a service record.

Q. What does this 90 day guarantee include, Mrs. Smith, do you know?

A. Well, since before the war—and we still do it the same way—we always have a standard guarantee on tractors. Anything over \$500 was guaranteed for 90 days. Sometimes we guaranteed them much longer, to keep customers happy if something unusual happened. We had a standard guarantee of 90 days, which is longer than the ones prescribed by the OPA.

Q. Is this the original contract or a copy?

A. That is the original. [24]

Q. Did the purchaser get a copy of that?

A. Yes.

Q. Was this 90 days guarantee on the contract at the time the contract was entered into?

A. Yes, because he gets a carbon copy of this order when it is written.

Q. Mrs. Smith, I have what purports to be a statement indicating the records of sales of used machines and tractors as indicated by sales invoices for the period from August 1, 1943, to October 30, 1943, certified to by Verna M. Smith. I will show you this statement and ask you if you made that statement.

A. This is what Mr. Forsythe wrote up? Is that the auditor?

Q. That is correct.

A. "I hereby certify that the foregoing is a true

(Testimony of Verna M. Smith.)

and correct transcription——” yes, I certified to that. He couldn't take our original invoices and orders from the office. He did not wish to. So I certified them as they appeared in our records.

Q. Then they were true and accurate copies, correct in every detail?

A. Some of them he wrote his comments in the column that I objected to, and I told him at the time——

Q. Did you state your objection on those papers at the time you signed them?

A. He crossed out some things that—he first made the statement that I was certifying he had had made a copy of all the invoices. And I said, “Well, you have only picked out the ones that you consider violations. You haven't taken them all. There are lots of invoices.”

Q. Mrs. Smith, are these correct copies of your records, the information on those sheets that you have there? They may not include all your records.

A. As near as I remember. He did the auditing. I did not. All I did was certify so he wouldn't have to take the——

The Court: Q. Madam, all the attorney wants to know is whether those papers that you have in your hand are correct copies of your records or not. A. These are original records.

The Court: No. You had better take those out of her hands.

(Testimony of Verna M. Smith.)

Mr. Golub: Q. Is that a correct copy of this record? A. This?

Q. Yes.

A. I would have to read it and see. [25]

Q. Will you read the certification to the Court?

A. "I hereby certify that the foregoing is a true and correct transcription of invoices for used machinery sold by our San Jose-Salinas office; that information concerning guarantees has been furnished the investigator as indicated in the column headed 'Comments', that I personally am familiar with these transactions; that all records are kept under my supervision and control."

I certified that the orders and the invoices were as he found them.

Q. Is that your signature on there?

A. That is my signature.

Q. Is this particular transaction noted on that statement there anywhere?

The Court: Your record is not going to be clear, Mr. Golub. You say "this particular transaction". The record does not show what you are talking about.

Mr. Golub: I am talking about the sale to Mr. Teresi on October 23, 1943.

The Witness: It says, "no guarantee" in the column, and I protested at the time. I signed it under protest, because he wrote on several of them there was no guarantee, because he said he didn't think they would consider it an adequate guaran-

(Testimony of Verna M. Smith.)

tee, because it was not in the prescribed form of OPA.

Mr. Golub: You saw that "no guarantee" on there at the time you signed it?

A. Well, he said that. There are several others. You will find the same thing, that he did not consider they would be adequate. He has written, "no guarantee" on everything except one or two places he made a concession and wrote "oral 60 days" and had me initial it over here.

Q. Is it my understanding, Mrs. Smith, you did not agree with him but you signed it anyhow?

A. I didn't agree on guarantees. I didn't stipulate what the guarantees were. I was only certifying that those were copies of our records so he wouldn't have to take them from the office. I wouldn't have any way of convincing him what [26] the guarantees were. He just wrote there was none on them and that was all.

Q. Are the invoices of this transaction in the sale of the tractor to Thomas Teresi attached to those records? Do you have the invoices there?

A. The invoice for the sale itself is not here, but it is in another bundle of invoices that I have.

Mr. Golub: (to Mr. Finch) Do you have those?

The Witness: No, the attorney hasn't got it. I can get it for you.

Mr. Finch: What do you mean by invoices?

Mr. Golub: We have asked for invoices on all machines and parts.



(Testimony of Verna M. Smith.)

The Witness: I have them if you want me to leave the stand and get them.

The Court: The witness says if she is permitted to leave the stand she can find them for you.

Mr. Golub: Q. I have here what purports to be an invoice of a sale of a used Cat. RD Tractor, Serial No. RE382 to Thomas E. Teresi, dated October 23, 1943?

A. That is exactly a copy. This sheet here is copied from it.

Mr. Finch: May I ask what you mean by an invoice, Counsel?

Mr. Golub: A statement, a sales tag, anything you want to call it.

Mr. Finch: A record?

Mr. Golub: A record of the sale in the transaction. This is an invoice, I assume.

Q. Is this the invoice you have brought pursuant to our subpoena? A. Yes, this tag, that is all.

Q. Can you identify that as the invoice in this sale? A. Yes.

Q. Does that invoice anywhere state that the tractor was sold on a reconditioned and a guaranteed basis? A. No, not on the invoice.

Mr. Golub: May I call your Honor's attention to the provisions of Section 1390.11 of Maximum Price Regulation 136, which states that in order for a machine to be sold on a reconditioned and guaranteed [27] basis four things must be proved: first, all worn and missing parts must be replaced. Two, it must be expressly invoiced as reconditioned

(Testimony of Verna M. Smith.)

and guaranteed and a binding written guarantee of 60 days satisfactory performance, and tested under power pressure. We offer this copy of the invoice of the sale to Thomas Teresi together with all the other records of the transaction as our exhibit first in order.

The Court: Very well, it will be admitted.

Mr. Finch: We have no objection, your Honor, except I asked Counsel what he means by the word "invoice." An invoice is a record. The record shows it was guaranteed. I believe it was invoiced as such.

The Court: I believe the witness testified, as appears on the back of one of the records, a substantial amount of reconditioning was done on the tractor without charge.

The Witness: There was \$244 worth of free service given on it.

Mr. Golub: In addition to that, your Honor, it must be expressly invoiced as guaranteed. The actual reconditioning and guaranteeing of a machine is not sufficient to take an 85 per cent price. It must in fact state on the invoice it was reconditioned and guaranteed and the binding written guarantee must be given. In addition to that, the fact that the repairs were actually made or that they offered to make repairs or did in fact—

The Court: Of course, you may argue that later. I would be inclined to think that that might be considered too technical. If there was a word of mouth guarantee and then actual performance,

(Testimony of Verna M. Smith.)

actual doing of the work, it would be a rather technical application of that rule.

Mr. Golub: That argument was made in the case of Bowles against Barber, I think it is. That was decided in the United States District Court, Eastern Division of Michigan, February 22, 1944.

The Court: Is it reported any place?

Mr. Golub: 54 Fed. Supp. 453. That case held that even though an oral guarantee was given, even though the machine may have in fact been reconditioned and guaranteed, if the binding written guarantee [28] as required by the regulation was not given, it could not be sold on an 85 per cent basis.

The Court: Did they allow treble damages in that case?

Mr. Golub: I do not know if they allowed treble damages, your Honor, but I will say that if the machine——

The Court: I think you might be entitled to an injunction, but it would be another thing to ask for treble damages.

Mr. Golub: The fact that the machine was reconditioned and guaranteed would tend to show good faith, your Honor, but the regulation specifically prescribes the method, and there is no ambiguity in the section whatsoever.

The Court: I do not disagree with you. I am talking about the remedy. I say upon a showing that that regulation was not complied with you might be entitled to an injunction, but whether or

(Testimony of Verna M. Smith.)

not the remedy of treble damages should be awarded is another matter.

Mr. Golub: Certainly, your Honor, at least the actual over-charges should be awarded. Perhaps the fact that the machine was reconditioned and guaranteed would go to show the good faith of the dealer in selling the machine. But certainly I do not think under any circumstances, when the regulations specifically say they cannot take the 85 per cent price and that their maximum price is 55 per cent, anything over that would be an overcharge.

The Court: In considering whether or not there was any actual overcharge, wouldn't you have to consider, for example, whether the amount of the reconditioning had not exceeded the percentage that is allowed? Perhaps I am not making myself very clear.

Mr. Golub: I understand your Honor's point, and although I thought of every angle of this, that is the first time I have heard of that one. I do not see how the actual service charges could be made a part of the cost. The price charged is the price at the time of the sale.

The Court: Let us say without the guarantee the man could charge \$100 and with the guarantee he could charge \$200, and he charged \$200, [29] but did not put the fact of the guarantee on the invoice, but had a verbal understanding, and then acted on it and did, we will say, \$75 worth of reconditioning work afterwards.

Mr. Golub: The price I sell it for, to begin with

(Testimony of Verna M. Smith.)

your Honor, is the 55 per cent price. The fact that eventually he may have put a lot of repairs upon that tractor and did not charge the purchaser for those repairs does not alter the fact that when that sale was made a payment was made to him for that tractor, or a contract for payment was made—in these cases payment was actually made—why, there was an overcharge according to clear wording of the regulation.

The Court: Because it was not included in the invoice, you mean?

Mr. Golub: That is correct, your Honor. In this particular case the contention is there was a 90 day guarantee given. We still do not contend that that complies with the regulation. Further, we still claim that at the time Mrs. Smith prepared that statement she certified it as having no guarantee. Now, I do not know whether that guarantee was on there at the time it was entered into or was put on at a later time. I do not know, your Honor.

The Court: I understand that point.

Mr. Golub: Q. Now, Mrs. Smith, do you have the records showing how maximum prices were established for any of the other eleven items that we have questioned today?

A. We checked the prices.

The Court: Q. He wants to know if you made in your written records——

A. No, they are all the same as this one.

Mr. Golub: Q. Do they all state a 90-day guarantee? A. No, no.

(Testimony of Verna M. Smith.)

Q. Do some of them leave out any reference to a guarantee at all?

A. Yes, on some of them there is nothing written at all.

Mr. Golub: Counsel, do you want to stipulate as to those which have nothing written on them at all, or do you want to take them out?

The Court: Why don't you try to get what you need together over the noon recess and that will probably save a little time in the matter. We will take a recess until 2 o'clock.

(An adjournment was thereupon taken until 2:00 o'clock p.m.) [30]

---

Afternoon Session,

June 14, 1945, 2:00 p. m.

The Clerk: Bowles vs. Mechanical Farm Equipment Distributors, Inc.

Mr. Golub: Ready, your Honor.

Mr. Finch: Ready, your Honor.

The Court: Proceed.

Mr. Golub: If your Honor please, during the noon recess I scrutinized the Graybar case. That was a summary judgment and the full treble damages were granted the administrator.

The Court: I will look at the decision.

Mr. Golub: I don't know whether or not your Honor would like to hear the official interpretation on the point of whether or not the invoice must

contain the express guarantee and whether or not in regard to repairs after sale should be added in as part of the sale price.

The Court: The regulation says it must be in the invoice. I was not intending to decide the matter, but was trying to find out what the point was in connection with this interpretation, and I was wondering if, in fact, the reconditioning work was done and whether or not that would affect the matter of the remedy rather than the violation.

Mr. Golub: We have agreed, your Honor, on certain items. We have agreed on what the base price was on those items and whether or not there was a written guarantee, and I think Mr. Finch is ready to stipulate at this time.

The Court: State what it is you will stipulate to.

Mr. Golub: In the sale to A. Antichi, it is stipulated that the base price was \$1,675. That is the new base price. It is also stipulated, your Honor, there was no written guarantee given in that matter.

Mr. Finch: Each guarantee is separate. I have them listed separately. [31]

Mr. Golub: All right, which ever you like. In the sale to H. R. Van Horn, it is stipulated that the new base price is \$2,850.

Mr. Finch: How much?

Mr. Golub: \$2,965, pardon me.

The Court: \$2,965 instead of \$2,850?

Mr. Golub: That is correct. And the sale to Charles J. Freitas, a new base price——

The Court: Which number is that?

Mr. Golub: That is No. 11 on the list.

The Court: I have it, yes.

Mr. Golub: The new base price is \$2,200. And the sale to T. J. Badame, it is stipulated the new base price is \$1,745. That is No. 13, your Honor. In the sale to John Fong—that is No. 18 on the exhibit—the new base price is \$1,675. In the sale to I. G. Buyak, it is stipulated the new base price is \$1,675. In the sale to C. C. Batten—No. 12 on the exhibit—it is stipulated that the new base price in that case would be the current suggested retail price of \$816.

As to the matter of whether or not a written guarantee was given we have agreed that in Item No. 4 the sale to A. Antichi, there was no written guarantee.

Mr. Finch: Let's put it this way: we will stipulate there is no question of written guarantee except on the following, because on most of them there are no written guarantees and on a minority of them, there is a guarantee line filled in, and it is up to the Court to determine whether or not it is a guarantee. I am contending it is a guarantee. Those are sales to Van Horn, Fong and Teresi.

Mr. Golub: That is Counsel's contention that there was a written guarantee and we don't agree to that.

Mr. Finch: I will stipulate there was no guarantee on those. I exclude those from the stipulation.

Mr. Golub: If we agree to that, then we must agree there was a guarantee on those other sales.



We will agree there was no [32] guarantee on the items we agreed on.

Mr. Finch: I say I would stipulate there was no written guarantee.

The Court: That is what he stated. You are in agreement on that. What are the numbers of those?

Mr. Golub: 4, 11—

Mr. Finch: Let's get them by name.

Mr. Golub: No. 4, Charles J. Freitas—no written guarantee; I. G. Buyak, No. 20, no written guarantee; G. C. Hayes, No. 3, no written guarantee; E. C. Grecian, No. 10, no written guarantee; C. C. Batten, No. 12, no written guarantee; and Carl E. Priest, No. 16, no written guarantee.

Mr. Finch: We don't mean there is no oral guarantee, just that there is no written evidence.

(The records re sale of tractor to Thomas D. Teresi were received in evidence as Plaintiff's Exhibits 1-A to 1-H.)

---

VERNA M. SMITH

resumes the stand as a witness on behalf of the plaintiff; and having been previously sworn, testifies as follows:

Direct Examination

Mr. Golub: Q. You have, Miss Smith, the record showing how the maximum prices were established in the sale to H. R. Van Horn?

A. I can tell you how we established it.

Q. Do you have anything with you?

(Testimony of Verna M. Smith.)

A. Just the same thing as the other one. There is a letter.

Mr. Finch: It is our contention there is a written guarantee.

A. Isn't there a copy of a letter with that? There is a letter that was written to Mr. Van Horn stating if he would bring in the starting motor on his tractor, which was the bone of contention, that we would repair it.

The Court: I don't know what we are getting into when you make these voluntary statements. Let us have the examination conducted in the usual way.

A. Yes.

Mr. Golub: Q. Miss Smith, I have here several contracts, four [33] in number, and also what purports to be an invoice setting forth the sale of a Cat. "15", P.B. 7032 Tractor—I will withdraw that last. I have all of the contracts here. I concede that. I have a contract of a sale of an RD 4 Tractor to H. R. Van Horn, dated August 17, 1943. Would you tell the Court what that represents?

A. This covers an RD 4 Tractor and a Diesel Oil Tanker.

Q. Was there a written guarantee on that?

A. It says, "Guaranteed in A-1 shape" on here.

Q. Is that the original? A. Yes.

Q. Was a copy sent to the purchaser?

A. It is supposed to be given him at the time.

Q. That is your procedure, to keep the original and give the copy to the purchaser? A. Yes.

(Testimony of Verna M. Smith.)

Q. Is there any other statement on there as to the condition of that tractor at the time it was sold other than the fact that it was in A-1 shape?

A. No.

Q. Do you have an invoice covering the sale of that tractor to Mr. Van Horn?

A. We have a sales tag like the one I gave you—will you tell me the date?

Q. It is the same date.

A. I think it is on the 20th.

The Court: Can't you reach the point you are getting at by stipulation, if it is a matter of record.

Mr. Golub: Will you stipulate, Mr. Finch, that none of the invoices have the words "written guarantee" on them?

Mr. Finch: I am not sure what you mean by an invoice.

The Court: Use Plaintiff's Exhibit No. 1.

Mr. Finch: I will stipulate none of those pieces of paper that are like this small piece which are attached to the sales, differing from the contract of sale, have any mention of guarantee on them. I don't stipulate that the contract is not an invoice, your Honor.

The Court: I am just trying to save time here. If I am stating something that is not correct, you may correct me. Will you stipulate a similar document to Plaintiff's Exhibit No. 1 was made up by the [34] defendant in each of the cases that Counsel is now going to refer to and on none of them does

(Testimony of Verna M. Smith.)

there appear to be any notation of any guarantee or reconditioning agreement.

Mr. Finch: Yes, your Honor, we will stipulate any of the references, with regard to the guarantee, that it is a contract sale only.

Mr. Golub: We won't stipulate to that, your Honor.

Mr. Finch: I am trying to preserve my position.

The Court: I am not trying to have you give up anything in your position. I am just trying to get the facts in the record. Are you willing to stipulate to what was said? Read the statement of Counsel, Mr. Reporter.

(Record read.)

The Court: That is all I want to have at the present time.

Mr. Finch: What I am getting at is that Plaintiff's Exhibit 1 seems to be these papers and I am making——

The Court: Let's mark the sheet we are referring to as Plaintiff's Exhibit 1-A?

Mr. Golub: Will it be out of order at this time to have your Honor take judicial notice of the fact that the tag appearing as Plaintiff's Exhibit 1-A is an invoice, or if you want I can take the invoices that we have subpoenaed.

The Court: Ask the witness, if there is any other invoice.

Mr. Golub: Q. Do you have any other invoices than the invoice I have here designating the name

(Testimony of Verna M. Smith.)

Thomas D. Teresi, dated October 23, 1943, Plaintiff's Exhibit 1-A?

A. No. We have no other.

Q. You have no other invoice?

A. We have no other invoice, but this is a contract of sale.

Q. What do you call this?

A. This is a sales tag.

Q. Referring to Exhibit 1-A?

The Court: You had better name the cases that are going to be covered by this stipulation. You started to read them off and you only got to one of them. [35]

Mr. Golub: This stipulation will refer to all sales. That would include the sale to A. Antichi, H. R. Van Horn, Charles J. Freitas, T. J. Badame, John Fong, I. G. Buyak, J. C. Hayes, E. C. Grecian, Carl E. Priest, C. C. Batten, and Thomas D. Teresi. We have this contract dated August 17, 1943, covering the sale of an RD 4 Tractor to H. R. Van Horn as our Exhibit next in order.

The Court: It may be admitted.

(The document in question was thereupon admitted in evidence as Plaintiff's Exhibit 2.)

Mr. Golub: Mrs. Smith, I have here what purports to be a contract of a sale of an A. G. Clectrac, Serial No. 19450 to one Badame.

I show you that contract and ask you to tell the Court what that contract is.

A. It covers an "X" Tractor.

(Testimony of Verna M. Smith.)

Q. Does that contract have on it any guarantee provision?

A. "The distributor or dealer makes to the purchaser the same and no other warranty than the following, to-wit: 2 months on faulty material."

Mr. Golub: We offer this contract in evidence as our exhibit next in order.

(The document was thereupon admitted in evidence as Plaintiff's Exhibit No. 3.)

Q. I have here a contract dated September 29, 1943, Mechanical Farm-Equipment Distributors, covering the sale of a Caterpillar 15, Serial PV 7032, to John Fong, and show you the contract, Miss Smith, and ask you to tell the Court what that contract represents.

A. This covers a tractor and other pieces of equipment.

Q. Will you tell the Court whether or not there is any provision on that contract—

A. It says on the guarante line, "Check over completely fix seat and air cleaner. Steam clean and paint."

Q. Is there any other reference to any guarantee?

A. Not on here. [36]

Mr. Golub: We offer this contract in evidence as our exhibit next in order.

(The document was thereupon received in evidence as Plaintiff's Exhibit 4.)

Mr. Golub: I have no further questions to ask of this witness.

(Testimony of Verna M. Smith.)

The Court: Any cross-examination?

Mr. Finch: No, your Honor.

The Court: That is all, Madam.

Mr. Golub: That, your Honor, is our case.

(Plaintiff rests.)

---

TESTIMONY OF J. R. DELFINO,

a witness called on behalf of the defendant (Page 72, line 11, to Page 77, line 24.)

Mr. Finch: Q. Mr. Delfino, I have shown you Repair Order, No. 0583. You identified that as Mr. Freitas and showing repairs done on his tractor for \$28 after the sale? A. After the sale.

Q. Why did you make those repairs?

A. Because we agreed to do such.

Mr. Finch: I will offer that in evidence as Defendant's exhibit next in order.

The Court: It may be admitted.

(Repair order to Charles Freitas dated November 17, 1943, was received in evidence as Defendant's Exhibit E.)

The Court: Q. You say you made an agreement, Mr. Delfino?

A. Yes.

Q. Did you have a conversation with Freitas?

A. Absolutely.

Q. What was it?

A. He asked me what shape the truck was in and I took him to show him the truck. He says,

(Testimony of J. R. Delfino.)

“What assurance have I this tractor will operate for any length of time?” And I says, “Our ordinary 90-day policy will take care of that.” He says, “What is that?” I says, “In the past, 90 days is the standard [37] agreement for anything that sold over \$500 since 1930, there was a 90-day satisfaction period to the purchaser.”

The Court: Q. What do you mean by that?

A. We maintained and kept that tractor in good working order for the 90 days.

The Court: Q. You mean as to defective parts?

A. As to defective parts and workmanship.

Q. You say this firm has followed that policy?

A. For sales above \$500 since 1930.

Q. Is that what you referred to in your conversation with Mr. Freitas? A. Yes, sir.

Q. Have you ever put that in writing in any of your transactions?

A. Only when they forced us to put it in writing, if a party says, “Your word doesn’t mean anything, so will you put that in writing.”

Q. Now, have you any evidence of what you would put in writing when you would put it in writing? A. Yes.

Mr. Finch: The contracts are in evidence, your Honor. “Van Horn guaranteed in A-1 shape.”

The Court: Is that what you refer to, Mr. Delfino?

A. Yes sir.

Q. Do you have any formal writing that you put in, saying, “We hereby guarantee for 90 days



(Testimony of J. R. Delfino.)

that this car will be guaranteed against any defects in the workmanship?" Did you have anything of that nature you put in?

A. That was our standard policy.

Q. What I want to know, is there any case where you put some formal guarantee of that nature in your contracts of sale?

A. Not that I know of in the last five or six years, we just listed this stuff.

Q. When you referred a moment ago that somebody requested you to put down something, what would you put in?

A. Put in either, "In A-1 shape," or put in, "90 days", or whatever they asked us to do.

Q. Irrespective of what went in the contract?

A. It didn't make any difference.

Q. You would in every case give that service?

A. In every case.

The Court: I have no other questions.

Mr. Finch: I might ask you a little bit about the M.F.D.: Mr. Delfino, how long have you been selling tractors?

A. Since 1930 in San Jose.

Q. Who did you work for?

A. Charles Odean Tractor Company.

Q. That is the predecessor of M.F.D.?

A. That's right.

Q. Your competitors all gave guarantees?

A. We all agreed to give approximately the same.

Q. What kind of a layout do you have there?

(Testimony of J. R. Delfino.)

A. We have a plant. It is about ten to fifteen thousand square feet, I imagine. We overhaul in the neighborhood—we have in the shop, or repair around ten or fifteen tractors and we have had as high as thirty tractors a month for repair. We make a thorough inspection of these used tractors and see that they are in good condition. Not only that, but in all these cases we have been hearing, we take the customer out to the ranch where he would want to buy it. He can bring anybody he wants to look at the machine and if he feels satisfied he wants that machine and he pays a deposit, we take it to the shop and he is welcome to come to our shop and make any inspection he wants. When the tractor is overhauled and when the tractor goes out in the field, if there is something wrong with the machine all he has to do is notify us and we will make the adjustments for 90 days. We always have in the past and always will.

Q. I will show you Repair Order No. 0663, Charles J. Freitas, dated December 4, 1943, for \$7.80. Is that one of the repairs made on the tractor?

A. That is one of the repair jobs some time after the tractor was delivered.

Q. Was there any charge?

A. There was no charge.

Mr. Golub: Your Honor, may we object on the ground that this testimony goes to a time some time after the sale? [39]

Mr. Finch: The more to show the good faith.

(Testimony of J. R. Delfino.)

The Witness: As a matter of fact, the customers that I have had personally that were customers of the Charles Odean Company since 1930 are still our customers and we are still selling them all the farm equipment. That I think is showing good faith in maintaining those customers. Sometimes, as late as six or eight months later we make repairs, maintaining customers.

The Court: Can't you lump all these together? What were the total repairs made on the job?

Mr. Finch: Q. That was \$7.80, Mr. Delfino?

A. Yes Sir.

Mr. Finch: Does the Court want these in evidence?

The Court: Just ask the witness a question on it.

Mr. Finch: Q. Mr. Delfino, I show you a sales contract, your inventory record: How much did you put in that tractor in the way of repairs before you sold it to Mr. Freitas?

The Court: That is subject to your objection and subject to a motion to strike.

A. I don't have any record here.

Mr. Finch: Q. \$60.45, isn't it?

A. Oh, yes, \$60.45 on the Freitas tractor.

Q. Now, on Mr. Montes, one of the tractors sold, could you tell how much in the way of repairs was put on Mr. Montes' tractor before he purchased it? A. \$113.25.

Mr. Golub: If Counsel has a lump sum for all of these repairs, I will stipulate the repairs were made.

(Testimony of J. R. Delfino.)

Mr. Finch: I have the figures.

The Court: Why don't you read the figures for each of these repairs? If you pile up a big record and one of you are dissatisfied with my judgment, you will have to pay a lot of money to have it written up.

Mr. Finch: Wait a minute. \$133 on Mr. Antichi; \$129.78 on Van Horn; \$20.60 on the Cleghorn Company; \$216.93 on the sale to Blocker; \$28.37 on the sale to Grecian; \$96.25 on the sale to Freitas; \$50.23 on the sale to Badame; \$36.40 on the sale to Brickerhoff; [40] \$45.39 on the sale to Priest; \$113.25 on the sale to Montes; \$72.26 on the sale to Fong; \$244.39 on the sale to Teresi; \$78.67 on the sale to Buyak.

The Court: These are repairs that were made after or before the sale.

Mr. Finch: That is both. Repairs that were made after were made on the Teresi car, the Montes car and the Freitas car.

Q. Did any of the others ask you about repairs, Mr. Delfino?           A. No sir.

Q. On the Hayes car, that is, under 133, repairs of \$67.38 were made before the sales?

A. Yes.

Q. On the Batten sale, also under 133, \$31.45 were made before the sale?           A. Yes.

---

#### TESTIMONY OF R. DELFINO

(Page 81, line 21 to Page 82, line 25)

Q. Will you tell the Court on the sale to Badame, that was an Oliver Standard 60?

(Testimony of R. Delfino.)

A. That's right.

Q. You sold that for a price of \$1,000?

A. That's right.

Q. Was that tractor sold within one year of the sale by you?           A. Absolutely.

Q. You sold it to Fred Epps on March 26, 1943?

A. That's right.

Q. What happened after that tractor was sold to Epps?

A. It didn't work out and Mr. Taggart of the Federal Farm Security Administration phoned me and asked me if I could switch it over to someone else and they said they wanted to get all they could out.

Q. That was owned by the Farm Security Administration?

A. That was owned by the Farm Security Administration.

Q. And you purchased it from the Farm Security Administration?           A. That's right.

Q. Did you take Badame out to show him the machine?           A. Yes, we did.

Q. I show you a check on the Anglo-California Bank, payable to the Treasury of the United States. Is that the check you paid on that tractor?

A. That is it.

Q. It shows you paid \$820 for the tractor and implements attached to it, \$130, is that correct?

A. That's right.

Mr. Finch: I will offer this, if the Court please.

(Testimony of R. Delfino.)

(The check in question was thereupon received in evidence as Defendant's Exhibit F.)

Mr. Finch: Q. Incidentally, there was no written guarantee on the particular Badame sale, was there? A. No sir.

Q. Did you give him an oral guarantee, and if so, what kind?

A. Ninety days—the same as we always have.

---

#### TESTIMONY OF VERNA M. SMITH,

witness recalled on behalf of the defendant (Pages 132 to 140)

#### VERNA M. SMITH

recalled for the defendant previously sworn.

Mr. Finch: Q. Mrs. Smith, on the \$198 overcharge, which we admit, on the small items set forth on pages 1 to 9 of the answers to interrogatories, those overcharges were occasioned by figuring freight as part of the cost on which you marked up, is that correct?

A. It was on figuring the percentages and which total we used before and after freight was added.

Q. I will show you a letter here from the Oliver Farm Equipment Sales and Service dated July 8, 1942, to "Oliver Dealers", and ask you if you received that letter.

A. Yes, this is from our files.

Q. And that letter advises that you include the

(Testimony of Verna M. Smith.)

freight in making your markup, is that correct?

A. They wrote us this letter in an attempt—

The Court: No, just answer the question and we will get along faster. [43]

The Witness: They added the freight just to the percentage afterwards.

Mr. Finch: We will offer that in evidence.

The Court: Have you any objection, Counsel?

Mr. Golub: No objection.

Mr. Finch: Merely to show the reason for it, your Honor. It shows they were so advised by their supplier.

(The document in question was thereupon received in evidence and marked Defendant's Exhibit G.)

Mr. Finch: Q. Mrs. Smith, I show you a letter from the San Francisco District Office of the Office of Price Administration bearing no date, signed by Charles Aikin, District Price Officer, by Charles E. Sweet, Price Specialist, on which there is a notation, "Received July 10, 1943," and ask you if that was received by your employer?

A. Yes, this was from our files.

Q. Do you know where that came from?

A. It came from the Office of Price Administration, San Francisco.

Q. Was it mailed to you by your board in San Jose or where?

A. No, I don't believe so. It came from San Francisco.

Q. You do not know where it came from?

(Testimony of Verna M. Smith.)

A. I am not positive.

Q. In these questions and answers on the farm equipment order,—I will read part of it, your Honor. You sold new crawler tractors, too, did you not? A. Yes.

Mr. Finch: (reading) “Sales of new crawler tractors by dealers. “Q. What regulation covers the sales of new crawler tractors sold by dealers to farmers?”

“A. Sales of crawler tractors to farmers by dealers are considered to be sales at retail, and are therefore excluded by Maximum Price Regulations 133, 136 and are governed by the general maximum price regulation.”

Question 31, sales of used crawler tractors.

“Q. What regulation covers the sales of used crawler tractors to farmers by dealers?” [44]

“A. Sale of a used crawler tractor by a dealer to a farmer would be considered a sale at retail and excluded from Maximum Price Regulation 136, and is placed under the general maximum price regulation.”

The Court: What kind of a tractor is that?

Mr. Finch: This is a letter which——

The Court: I mean how does it describe the tractor?

Mr. Finch: It simply says Regulation 136.

The Court: You used some word in describing the tractor.

The Witness: Crawler.

Mr. Finch: A crawler, track type tractor.



(Testimony of Verna M. Smith.)

The Court: It is not a trade name; it is referring to the type of tractor?

Mr. Finch: Yes. A crawler tractor is often loosely known as a Caterpillar tractor, a Caterpillar type.

Q. When you read that, Mrs. Smith, what did you do with respect to your prices then?

A. We didn't do anything. It just served to make the confusion greater.

Q. You did not know where you stood then?

A. No.

Q. You followed 136 on your sales of new tractors notwithstanding this letter, is that right?

A. Yes, we followed 136 on used ones except things that now they find were violations.

Q. You did get this letter, and is that the only advice you got from the OPA on crawler type tractors?

A. That is the only information we have there, except some letters that we asked about 136 and they told us about 133.

Q. Your dealings were mostly on 133?

A. The replies were on 133 because that was farm equipment.

Mr. Finch: We will offer that as defendant's next in order.

(The document in question was thereupon received in evidence and marked Defendant's Exhibit H.)

Mr. Finch: That is all. [45]

(Testimony of Verna M. Smith.)

DEFENDANT'S EXHIBIT "H"

San Francisco District Office  
Office of Price Administration  
1355 Market Street  
San Francisco, California

In Reply Refer To: 8SF:CES(P)

Gentlemen:

The enclosed list of questions and answers are intended to clarify certain of the principal points of Maximum Price Regulation 133, Retail Sales of Farm Equipment. These questions and answers are issued to serve as a guide and are intended to expedite comprehension of the regulation.

These questions and answers cannot be regarded as a substitute for the regulation. The regulation itself establishes your legal duties and in order to protect yourself you must familiarize yourself with it.

Copies of the regulation will be mailed to you upon request.

Yours very truly,

CHARLES AIKIN

District Price Officer

(Signed) By CHARLES E. SWEET

Price Specialist

I. General

(1) Farm equipment defined

1. Q. What is meant by farm equipment?

(Testimony of Verna M. Smith.)

A. Farm equipment means any equipment, attachment, or part used primarily in connection with the production and farm processing for market and farm use of agricultural products but does not include automobiles, trucks, general purpose tools, building materials, electrical equipment, except fence controlers, sprays or other chemicals, commercial processing machinery, livestock, seeds, feeds or any other agricultural products. A partial list may be found in the regulation.

(2) Complete farm equipment defined.

2. Q. What is "complete farm equipment"?

A. Complete farm equipment includes any items of farm equipment which is a complete unit in itself although it may be used only in conjunction with other farm equipment.

(3) Used farm equipment defined.

3. Q. What is considered used farm equipment?

A. Used farm equipment means any farm equipment which has previously been used.

(4) Suggested retail price defined

4. Q. What is meant by the expression, "suggested retail price"?

A. "Suggested retail price" means the price stated in the manufacturer's current list or recommended retail prices f.o.b. factory, whether or not such list price is in the possession of the dealer.

(5) Mail order house prices

5. Q. Are the prices on farm equipment set

(Testimony of Verna M. Smith.)

forth in mail order house catalogues considered "suggested retail prices"?

A. No. The prices issued by mail order houses are not deemed to be suggested retail prices. Maximum prices applicable to the sale of new equipment by mail order houses, whether direct or through retail stores, shall be calculated in accordance with Paragraph (c) of Section 1391.3 of the regulation.

(6) Farm equipment regulations

6. Q. What regulations establish maximum prices for farm equipment?

A. Maximum Price Regulation 133 establishes maximum prices charged by retail dealers for all items of new and used farm equipment and parts. It also sets maximum prices for five (5) important items of used equipment when sold by farmers, auctioneers, and others.

Maximum Price Regulation 246 establishes maximum prices charged by manufacturers and wholesale distributors.

(7) Rationing of farm equipment.

7. Q. Does the Office of Price Administration ration farm equipment?

A. No. The rationing of new farm equipment is administered by the Food Production Administration through the state and county War Boards. A special farm machinery rationing committee functions in each county subject to the provisions of Ration Order C, issued by the Department of Agriculture.

(Testimony of Verna M. Smith.)

(8) Where to obtain priorities to purchase new farm equipment

7. Q. How does a farmer obtain priorities for the purchase of new farm machinery?

A. All such inquiries should be referred to the local farm machinery rationing committee whose office is usually at the Office of Agricultural Adjustment Administration at the county seat.

## II. Sales of New Equipment by Dealers

(9) How to figure maximum prices from published list prices

9. Q. How should a dealer compute his maximum price for items of new farm equipment if the manufacturer has a published suggested retail price list?

A. The dealers maximum selling price will be the sum of the following:

(1) The manufacturer's suggested retail price f.o.b. factory.

(2) Freight from the factory to the factory branch at the carload rate less any allowance or rebate. The average combined freight rate is used where shipments are customarily made direct from the factory to the dealer.

(3) Freight from the factory branch to the dealer's place of business at the less than carload rate.

(4) The manufacturer's or wholesaler's handling charge if it is not included in the manufacturer's or wholesaler's price.

(Testimony of Verna M. Smith.)

(5) The dealer's handling charge, which is figured at 5% of the first \$400 of the suggested retail price f.o.b. factory plus 2% of the amount in excess of \$400.

(6) Ten (10) cents for each mile in excess of 30 miles each way for truck delivery from his place of business. However, the dealer must reduce his handling charge by the actual cost of the service involved if he does not perform the following services:

(a) Erect the equipment

(b) Install attachments

(c) Deliver the new equipment and carry away trade-in equipment.

(7) Federal excise tax, if the tax is billed separately by the manufacturer and is not included in the suggested retail price.

(8) Any special installation charge for fixed equipment, should special installation be necessary. This charge must not be greater than the charge customarily made on April 1, 1942 and it must not be added to the dealer's handling charge as shown in (5) above.

(10) Itemized invoices required.

10. Q. Is the dealer required to supply an itemized invoice to the purchaser of new farm equipment?

A. Yes, in connection with every sale for \$15.00

(Testimony of Verna M. Smith.)

or more of new complete farm equipment having a suggested retail price.

(11) Sales of new crawler tractors by dealers.

11. Q. What regulation covers the sales of new crawler tractors sold by dealers to farmers?

A. Sales of crawler tractors to farmers by dealers are considered to be sales at retail, and are therefore excluded by Maximum Price Regulations 133, 136 and are governed by the General Maximum Price Regulation.

(12) Dealers' records and reports

12. Q. What records and reports must a dealer keep?

A. A dealer must keep the following records:

(1) A record of each sale showing the date of sale, make and model of the implement or part, number, total sales price received, and a copy of the invoice or sales check given to the customer.

(2) Whenever trade in equipment is received in part payment of the purchase price of new equipment, the dealer shall keep attached to the record of the ensuing sales of trade-in equipment.

(13) Penalties for violations

13. Q. What penalties are provided for violations of this regulation?

A. Persons violating any provisions of Maximum Price Regulation 133 are subject to the criminal penalties, civil enforcement action, license suspension proceedings, suits for treble damages pro-

(Testimony of Verna M. Smith.)

vided for by the Emergency Price Control Act of 1942.

(14) Filing of copies of invoices given to purchaser

14. Q. Where does a dealer file copies of his invoices or sales checks he gives to purchasers of equipment?

A. All copies of dealer's invoices which are sent to the County Rationing Committee will be filed in the county office.

(15) Handling charges on combines.

15. Q. Will any special handling charges be allowed on combines?

A. No, even though the 5% may not be enough to cover the actual charge in this case, it will be more than enough on other items.

### III. Sales of Repair Parts by Dealers

(16) Maximum prices on repair parts.

16. Q. How should a dealer determine his maximum price for new parts which have a suggested retail price?

A. The maximum price is the sum of the following:

(1) Suggested retail price (2) actual freight (3) manufacturer's or wholesale distributors handling charge when not included in freight (4) any extra expense incurred at the request of the purchaser such as telephone calls, etc.



(Testimony of Verna M. Smith.)

(17) Maximum price on repair parts

17. Q. How does a dealer determine his maximum on repair parts which do not have a suggested retail price?

A. Dealer would use, (1) the net price in effect on April 1, 1942 including all extra charges, but not including sales tax, (2) Exception where a price in effect on April 1, 1942 was based on manufacturer's or wholesaler's price to dealer lower than that in effect on April 1, 1942.

(a) Dealer's net price in effect on April 1, 1942

(b) Percentage of increase equal to percentage of increase in manufacturer's or wholesaler's price made prior to April 1, 1942.

(18) Percentage of list on parts may be added in lieu of actual freight

18. Q. May a dealer add a fixed percentage of the list price to parts in lieu of actual freight?

A. Yes, provided he can justify the percentage added in the sense that the total charge so added shall not exceed the transportation charges actually paid by him.

(19) Sales of used parts

19. Q. What regulation covers the sale of used parts?

A. The General Maximum Price Regulation governs the prices to be charged for used parts.

(Testimony of Verna M. Smith.)

(20) Used tractor tires

20. Q. What regulation governs the price of used rubber tractor tires?

A. If the sizes are listed Maximum Price Regulation 107, if not listed, General Maximum Price Regulation.

(21) Extra expense on sale repair parts

21. Q. Can telephone calls made by a dealer to his branch house and other extras incurred by the dealer in obtaining repair parts or delivering them to a purchaser, be included in the price?

A. Yes, but only when such extra expenses are specifically "incurred at the request of the purchaser".

(22) Records on sales of repair parts

22. Q. What type of record should a dealer keep on the sales of repair parts?

A. All that is necessary is a simple book entry record covering the number of the part, the quantity purchased and the price. No sales slip need be given.

#### IV. Sales of Used Farm Equipment by Dealers

(23) Used equipment acquired before May 11, 1942

23. Q. Is used equipment received in trade prior to May 11, 1942 subject to the regulation?

A. Yes.

(24) Livestock is not farm equipment.

24. Q. Do livestock and other non-farm equipment items accepted in trade and later resold by

(Testimony of Verna M. Smith.)

the dealer come under Maximum Price Regulation 133?

A. No. Only farm equipment is covered. In this connection refer to Section 1361.4 of the regulation which prohibits undervalving goods other than farm equipment received in trade.

(25) Mark-up on used equipment.

25. Q. How does a dealer find his maximum price for used equipment?

A. A dealer finds his maximum price by adding the sum of the following:

(1) The trade-in allowance or purchase price paid by the dealer, or balance due (if repossessed).

(2) \$15. or 5% of (1) whichever is greater.

(3) Maximum price paid for repair parts used.

(4) The cost of other materials and labor used in repairing figured at maximum established prices.

(26) Dealers handling charge on used equipment

26. Q. Is a dealer permitted to add a handling and delivery charge on sales of used equipment?

A. No, unless transported 100 miles or more, in which case the actual cost of transportation from the place of purchase to the dealer's place of business may be added.

(27) Guarantee on used equipment

27. Q. Does a dealer have to use the guarantee form as specified in Section 1361.11 of the Regulation?

(Testimony of Verna M. Smith.)

A. Yes. The guarantee may be considered a "minimum guarantee". All its provisions must either be included or exceeded in the guarantee.

(28) Where to secure guarantee forms

28. Q. Does the Office of Price Administration furnish the blank forms for the "guarantee" mentioned above?

A. No. Such forms may be secured from dealer's associations or from the "National Retail Farm Equipment Association".

(29) Base price for five items placed under specific price control

29. Q. In arriving at a base price on tractors, combines, corn pickers, corn binders and hay balers, may freight and handling charges be added to the manufacturer's suggested list price, f.o.b. factory?

A. No, but taxes may be added to all maximum prices, if such tax is stated separately on the invoice.

(30) Sales to other dealers

30. Q. If Dealer "A" purchases a used machine and completely reconditions it, may he resell it as a guaranteed machine to another dealer "B" and thus obtain a 25% mark-up?

A. No, the regulation states that the 25% mark-up applies only on sales to a user.

(31) Sales of used crawler tractors

31. Q. What regulation covers the sales of used crawler tractors to farmers by dealers?

A. A sale of a used crawler tractor by a dealer

(Testimony of Verna M. Smith.)

to a farmer would be considered a sale at retail and excluded from Maximum Price Regulation 136, and is placed under the General Maximum Price Regulation.

V. Sales of Used Equipment by Farmers,  
Auctioneers, Etc.

(32) Ceiling prices for certain items

32. Q. Are persons other than dealers subject to ceiling prices in selling used farm equipment?

A. Yes, on sales by actioneers, farmers and all other persons of tractors, combines, corn pickers, corn binders and hay balers. Sales of other items are not covered.

(33) Sales of listed items prior to auction

33. Q. May a farmer who is selling his machinery at auction sell items under price control to friends prior to the auction?

A. The five items are subject to price control no matter to whom sold. You may always sell to anyone at or below the maximum price.

(34) Paint job cannot be added to

34. Q. A farmer spends \$50 or \$60 repainting and cleaning his tractor prior to a sale. Can he add this sum to his ceiling price? A. No.

(35) Selling above ceiling prohibited

35. Q. Is there any legal manner in which a farmer can sell a tractor or other item of used machinery covered by the regulation to another farmer at a price higher than the maximum price?

(Testimony of Verna M. Smith.)

A. No, the regulation covers all sales by farmers.

(36) Does the Office of Price Administration set up price lists?

36. Q. Does the Office of Price Administration set up a price list of used farm equipment covered by the regulation so that farmers can determine maximum prices?

A. No such list has been prepared or is contemplated. We are sure that you can get full information on the price of various pieces of equipment from your local dealer. If not, he can get it for you.

(37) Base price clarified

37. Q. Is the base price the suggested list price for the nearest dealer in the neighborhood or the base price f.o.b. factory?

A. The regulation clearly states it is the f.o.b. factory list price.

(38) Joint sales prohibited

38 Q. May a retail dealer, service dealer, auctioneer farmer or any other person sell any of the five listed items, (tractors, combines, corn binders, corn pickers or hay balers) sell jointly with another item of equipment whether listed or not with any other commodity for a lump sum?

A. No, each item of the above list must be sold separately as provided in Amendment #4. This amendment permits the joint sales of one of the listed items together with other items which are specifically designed for mounting on the principle

(Testimony of Verna M. Smith.)

item, provided that the combination is sold as a unit. Any item of equipment which is not mounted on the principal item when being used, is not considered a mounted item and therefore may not be included in a combination sale. For instance: a tractor drawn item of equipment which may be detached and used in connection with some other tractor is not a mounted item and therefore may not be included in a combination sale.

(39) Mounted implements not subject to "ceilings" when sold separately

39. Q. When mounted implements are detached from the principal item and sold separately, are they subject to the percentage of base price ceiling? A. No.

(40) Farmer to farmer sales of used crawler tractors

40. Q. What regulation covers the sales of used crawler tractors by one farmer to another farmer?

A. The answer is the General Maximum Price Regulation.

---

### Cross Examination

Mr. Golub: Q. When did you receive this communication marked Defendant's Exhibit H?

A. July 10, I believe, 1943.

Q. July 10, 1943? A. Yes.

Q. Did you ever receive any other communica-

(Testimony of Verna M. Smith.)

tion from the Office of Price Administration with regard to crawler tractors?

A. Not directly in reference to whether 136 applied or not.

Q. Did you ever write a letter to the Office of Price Administration and ask for that information?

A. We wrote several letters. I don't know the exact dates of them. We have all kinds of letters on them.

Q. Did you receive any replies? A. Yes.

Q. Do you have any of those letters with you?

A. I believe Mr. Finch has one or two.

Mr. Finch: I have one, the only one I know of, and I do not have the original. It dealt with Regulation 133.

The Witness: Yes.

Mr. Golub: Q. You have no correspondence with regard to Regulation 136?

A. We wrote in on two or three occasions and inquired about crawler tractors, and they replied on 133. We inquired about Cle type tractors and they replied on 133 on one occasion. That I remember—saying it was the farm order, and so on. But most of our communications on any of the prices was with the local board by telephone, and we phoned the city several times. I remember talking to Mr. Aikin.

Q. When you received this communication did you take it for granted that crawler tractors were not covered by—



(Testimony of Verna M. Smith.)

A. I did not. We did not know exactly what the order was that controlled used crawler tractors. I remember talking to Mr. Wright about it, the Caterpillar tractor. That was two years ago. We have learned a lot about it since then.

Q. Have you made any attempt to find out about it?

A. Yes, I called him to see if he got it, and he had it in his file, too. [46]

Q. Called whom?

A. Mr. Wright, the Caterpillar dealer.

Q. Did you call the Office of Price Administration?

A. I don't remember. I don't believe I did, about that particular thing.

Q. During the period August 1943 through October 1943 how were you pricing tractors?

A. We were attempting to price them by the 55 and 85 percentages.

Q. And you got those percentages from Maximum Price Regulation 136?

A. We had all kinds of bulletins from the National Retail Equipment Association, also manufacturers, that advised us of these percentages, and there were price meetings. I remember going to one myself, where the man couldn't answer my questions.

Q. Did you have a copy of the regulation at that time?

A. No, I don't believe so. We didn't get the reg-

(Testimony of Verna M. Smith.)

ulations when they first came out. I do not know whether we were on the mailing list or not.

Q. I am not talking about when they first came out, Mrs. Smith, I am talking about the period October 1—

A. We had the original 136, but we did not have the amendments, because Mr. Forsythe, the auditor, and I checked our files. We didn't have them, and he got them together and sent them down to us after that.

Q. During the period August 1, 1943, through October, 1943, you knew you were pricing under some regulation.

A. We were attempting to price according to regulation, yes, but we were never very sure which one to apply. We were not trying to evade the regulations.

Q. And you did not make any inquiries of the Office of Price Administration as to which regulation applied?

A. Yes, we did—not up here in San Francisco maybe, but we called our local board.

Q. What did they tell you?

A. Many things, many different things. They said one time when we inquired about the guarantee, they said under 136 it should be a binding guarantee. That was the original order. I remember that.

Q. Did these trade bulletins you received make any reference to 136?

A. No, they were mostly about 133—I mean

(Testimony of Verna M. Smith.)

from the [47] National Retail Equipment Association. From the factory they were about 136. But there was lots of confusion between the two in the minds of everyone concerned. We know now, but it has taken a long time to get there.

Q. As a matter of fact, this communication you received refers to Regulation 133, does it not?

A. This refers to 136 in those paragraphs.

Q. The letter of coverage refers only to 133, doesn't it?

A. This says Maximum Price Regulation 133, retail sales of farm equipment.

Q. And the questions and answers in there apply only to MPR 133, is that right?

A. According to what Mr. Finch read, it says. It says crawler tractors are not covered by 133 or 136.

Q. Can you find that part for me, please?

A. Just a minute. Wasn't it 11? Yes, it is marked here. It says: "Sales of new crawler tractors by dealers.

"Q. What regulation covers the sales of new crawler tractors by dealers to farmers?

"A. Sales of crawler tractors to farmers by dealers are considered to be sales at retail, and are therefore excluded by Maximum Price Regulations 133, 136 and are governed by the general maximum price regulation."

Q. That is a sale of new crawler tractors?

A. Yes.

(Testimony of Verna M. Smith.)

Q. Is there any reference to used crawler tractors?

A. Yes. He read another one here. I haven't seen this thing for some time. What paragraph was that?

Mr. Finch: 31, I believe.

The Witness: Yes.

“Q. What regulation covers the sale of used crawler tractors to farmers by dealers?

“A. A sale of a used crawler tractor by a dealer to a farmer would be considered a sale at retail and excluded from Maximum Price Regulation 136, and is placed under the general maximum price regulation.” [48]

Q. However, you continued after receiving that to price those tractors on a 55 per cent and 85 per cent basis?

A. Well, if I may be permitted to say so——

The Court: Please answer the question. The attorney will argue the matter. He wants to know whether, after you received the notice, you priced your sales of tractors under the 55 and 85 per cent basis.

The Witness: We attempted to, yes sir.

Mr. Golub: Q. That answer there advised you that those tractors were to be priced under the general maximum price regulation, is that correct?

A. Yes.

Q. Did you get a copy of the general maximum price regulation?

A. We have a copy of the general max.

(Testimony of Verna M. Smith.)

Q. Did you see anything in that regulation about 55 and 85 per cent?

A. No. It says, if I remember correctly, that they were to be sold the way they were in March 1942.

Q. You did not see any reference in there to 55 or 85 per cent?           A. No.

Q. Why did you use the 55 and 85 per cent?

A. Because that is what we used on our other farm equipment, the wheel tractors, plows, and that kind of thing.

Q. You mean under Regulation 133?

A. Yes.

Q. In other words, you did not make any attempt to price those tractors under general maximum price regulation.

A. Yes, I remember checking several of the tractors for general maximum price.

Q. I don't quite understand your answer.

A. I took several of the prices, after we arrived at them by the 85 per cent, and then checked to see if that exceeded the prices that were charged in March 1942.

Mr. Golub: I have no further questions.

The Court: That is all. [49]

## TESTIMONY OF CYRIL M. ODLIN

a witness called on behalf of the defendant (Pages 140, line 21 to Page 146, line 10)

## CYRIL M. ODLIN

called as a witness for the defendant; sworn.

The Clerk: Q. State your name to the Court?

A. Cyril M. Odlin.

## Direct Examination

Mr. Finch: Q. Mr. Odlin, you are employed by M.F.D. at the present time? A. Yes.

Q. Prior to your employment with the MF.D. you were employed by the Office of Price Administration, were you not? A. Yes sir.

Q. And prior to that time you were employed by Dean Tractor Company?

A. No, I was—previous to that I was with the Packard Motor Car Company.

Q. You had been with the Dean Company before that?

A. Right, yes.

Q. What is your job now with the Mechanical Farm Equipment Company?

A. General manager.

Q. As such do you help on price regulations, keeping up with the price regulations that are now being issued? A. Yes sir.

Q. How about the other regulations, such as those of the War Production Board?

A. Everything—follows right through.

Q. Labor? A. Labor.

(Testimony of Cyril M. Odlin.)

Q. That is part of your duties? A. Yes, sir.

Q. At the present time, Mr. Odlin, Mechanical Farm is doing its best to keep up with these regulations and comply with them, is it not?

A. A hundred per cent, yes sir.

Q. Do you have a copy of the new revised Maximum Price Regulation 136? A. Yes sir.

Q. You have read that carefully?

A. Yes sir.

Q. Giving a written form of guarantee which is required by that new order? A. Yes sir.

Q. You have forms of guarantee put out by the National Retail Farm Association?

A. Right. [50]

Q. For use by dealers, and you give those guarantees now on a guaranteed sale?

A. On each sale.

Mr. Finch: That is all.

#### Cross-Examination

Mr. Golub: Q. I did not understand in what capacity you are employed by the Mechanical Farm Equipment.

A. General manager.

Q. How long have you been employed?

A. Eight months.

Q. When were you employed by the Office of Price Administration, Mr. Odlin?

A. From June, 1942, to October, 1944.

Q. In what capacity?

A. First as chief clerk of the San Jose board,

(Testimony of Cyril M. Odlin.)

rationing board, and then as board relations, San Francisco office.

Q. Did you ever hear of Maximum Price Regulation 136 before you came to work for Mechanical Farm Equipment?      A. Oh, yes.

Q. Was it your understanding that Maximum Price Regulation 136 applied to the sale of used crawler tractors?      A. At the time——

Q. During the period August, 1943, to October, 1943?      A. That was never clear.

Q. Never clear?

A. In the San Francisco office nor in any of the boards.

Q. As a matter of fact, isn't it true when the first regulations came out in 1942 there was confusion, but subsequent interpretations were put out to the trade which clarified that confusion?

A. The digests were put out and other information given, but I do not believe it ever got out to the dealers.

Q. As a matter of fact, other than that interpretation that you just heard Mrs. Smith read, was there ever any interpretation put out by the Office of Price Administration indicating that crawler tractors were not covered by 136?

A. I did not handle that part of it, sir. That was handled by the price officer.

Q. What do you consider cotton farming?

Do you consider the production of cotton farming?      A. How is that? [51]



(Testimony of Cyril M. Odlin.)

Q. Do you consider the production of cotton farming? A. Yes.

Mr. Finch: We object to that as incompetent, irrelevant and immaterial. What is the purpose of the question?

Mr. Golub: The purpose of the question, your Honor, is this: I am looking at Maximum Price Regulation 136 dated June 30, 1942. There is an appendix on that regulation setting forth certain machines that can be priced on what is called the depreciation method. They are relatively new machines, and one of the machines that is listed in this appendix of this regulation dated June, 1942, is a cotton ginning machine. Now, my point is this, your Honor: if the regulation was never intended to apply to farming operations, why does the regulation cover cotton ginning machines?

Mr. Finch: Your Honor, that is a question of argument.

The Court: You will have to get somebody to answer that question. I couldn't answer it.

Mr. Golub: Q. You say you consider the production of cotton farming?

A. I didn't say the ginning; growing, yes.

Q. Do you know where ginning machines are used?

A. Ginning is the harvesting, I would presume.

Q. Would it be used on a farm?

A. I wouldn't know.

The Court: Q. How large a business does the defendant have?

(Testimony of Cyril M. Odlin.)

A. You mean in volume?

Q. Well, in some way you can describe it to me to indicate the size.

A. It is about a \$85,000 business.

Q. Gross a year?

A. Gross business a year, we do about \$500,000.

Q. How many employees are there?

A. About 27.

Q. Was that equally true in 1943 as it is now, from your knowledge?

A. Yes, to my knowledge it would be about the same.

Q. What have they got in San Jose? A show room?

A. We have a show room.

Q. And a repair department?

A. A repair department—a complete setup of farm equipment.

Q. How many employees are there in the sales end of the business? [52]

A. At the present time——

Q. In 1943? A. One.

Q. Just one? A. Yes.

Q. Where are the bulk of the employees?

A. Repair department.

Q. And maintenance? A. Maintenance.

Q. How large an office force? A. Four.

Q. Were there four in the office force in 1943, do you know? A. Yes, I believe that is right.

Q. Does that include the owner?

A. No, that is exclusive of the owner.

Q. Does the owner actively participate in the business? A. Yes.

(Testimony of Cyril M. Odlin.)

Mr. Golub: Q. Mr. Odlin, I have here Maximum Price Regulation 136 issued June 30, 1942. The last amendment appearing on this is dated November 27, 1942. I will show you the bottom of the first column, the second from the last item. That is included in the appendix of machines covered by that regulation. Would you read that, please?

A. "Crawler and non-agricultural tractors."

Mr. Golub: Your Honor, this regulation, the last amendment to this regulation, is dated November 27, 1942, and in the appendix it definitely states crawler tractors.

Mr. Finch: Crawler and non-agricultural tractors.

The Court: What point are you making by that?

Mr. Golub: The point I am making is this: the testimony of Mr. Odlin is there was confusion as to whether or not crawler tractors were covered by Maximum Price Regulation 136, and Mrs. Smith testified she received a communication stating they were not covered by 136.

Mr. Finch: Not all, just sales at retail. It did not say crawler tractors were not covered by Regulation 136. It said sales to farmers, retail sales were covered.

Mr. Golub: That depends on what you consider to be a sale by retail, which we have not argued yet. Apparently Counsel is going to argue that point.

The Court: Any further questions?

Mr. Golub: No. [53]

## TESTIMONY OF AUSTIN CLAPP,

a witness called on behalf of the plaintiff (Page 174, line 9, to Page 177, line 20.)

## AUSTIN CLAPP,

called as a witness for the plaintiff in rebuttal;  
sworn.

The Clerk: Q. Please state your name to the Court.

A. Austin Clapp.

## Direct Examination

Mr. Golub: Q. What is your occupation, Mr. Clapp?

A. Attorney at law.

Q. Are you employed by the Office of Price Administration? A. I am.

Q. In what capacity?

A. Regional enforcement executive, San Francisco Region.

Q. How long have you been employed by the Office of Price Administration?

A. Since October, 1942; first with the Washington Enforcement Division.

Q. Since October, 1942?

A. That is right.

Q. What was your position in the Washington Enforcement Division?

A. I was chief of the Industrial Manufacturing Branch of the Enforcement Division, which had under its jurisdiction machinery, commodities, including crawler and wheel-type farm tractors.

(Testimony of Austin Clapp.)

Q. Mr. Clapp, I show you Defendant's Exhibit H and ask you if you have ever seen that before (handing a document to the witness).

A. I have not.

Q. Did you hear the defendant's testimony as to what that contained?      A. Yes, I did.

Q. Do you know when such an interpretation was given to the trade and under what circumstances?

A. I do not know anything about this particular interpretation. I do know this, however, about the situation: the question of whether or not crawler tractors when sold to farmers were subject to MPR 136 did not become an issue of any kind until shortly after January 9, 1943. The significance of [54] January 9 was that on that date the Regulation 133 was amended so as to govern sales by one farmer to another. Prior to that time there had been no price regulation for selling a wheel-type tractor by one farmer to another. At the time the market for tractors was extremely active. And then two weeks after the January 9 date there were reports of literally hundreds of violations.

The Court: How is this of any importance?

Mr. Golub: We hope to establish, your Honor, that there were interpretations put out prior to the date of the violations in this case, firmly establishing the fact——

The Court: Ask him that. Let us bring out the fact.

Mr. Golub: Q. Were interpretations issued to

(Testimony of Austin Clapp.)

the trade prior to August, 1943, firmly establishing the fact that crawler tractors sold at retail to certain types of users were subject to the regulation?      A. Yes, in March, 1943.

Q. In March, 1943?      A. That is right.

Q. Was there ever any doubt so far as the Office of Price Administration was concerned that they were subject to the regulation?

A. Not as far as the Washington office was concerned. Shortly after January 9, which is what I was leading up to, some offices omitting to read the definition of sales at retail in Maximum Price Regulation 136 jumped hastily to the conclusion that the sale of a crawler tractor to a farmer was a sale at retail and did issue at one time interpretations to the same effect as this.

Mr. Finch: We object to the testimony insofar as it decides a question of law.

The Court: Yes. I think I have enough to do to try the facts of this case without going into the whys and wherefores of the regulations as between the main office and the regional office.

Mr. Golub: I won't clutter up the record with any more of that, your Honor.

The Court: I do not really think that that would be of any importance. [55]

Mr. Golub: My purpose in doing that, your Honor, is that this has been introduced showing a state of confusion amongst the trade with regard to whether sales to the trade were covered by Maximum Price Regulation No. 136. By asking

(Testimony of Austin Clapp.)

these questions of the witness I hope to establish long prior to the violations in this case there was no confusion or should not have been had anyone made any effort at all to find what the regulations stated.

The Court: He said the national office issued the interpretation in March, 1943, and there it was. That is about the size of it.

The Witness: That is right, your Honor.

Mr. Golub: Q. Do you know who signed that interpretation there?

A. No. I mean it says here "Charles E. Sweet, Price Specialist," but I do not know him.

Q. You are familiar with the regulations of the Office of Price Administration? A. I am.

Q. Do you know whether or not a price specialist can give an official interpretation?

A. He cannot.

Mr. Golub: That is all.

(From the Reporter's Transcript of June 14, 1945.)

[Endorsed]: Filed Nov. 15, 1945. [56]

[Title of Court and Cause.]

DEPOSITION OF WALTER SHOEMAKER ON  
BEHALF OF THE PLAINTIFF

(Pages 19, 21 & 24.)

(Page 19)

Q. In your opinion, Mr. Shoemaker, what is the nearest equivalent machine to a Caterpillar tractor Model 50 Diesel?

A. We found that the Caterpillar Model 50 was an obsolete machine, which had a drawbar horse power of 56.03 and that its nearest equivalent current machine is an International TD 14, with a drawbar horse-power of 54.04 horse-power, and with a current selling price of \$4325.00 f.o.b. factory.

(Page 21)

Q. Do you have on file the manufacturer's maximum published price for Cletrac Tractor Model AG?

A. Yes; the Cletrac Tractor Model AG is a current machine and the file price with OPA is \$1745.00.

Q. And is that price the new base price of the machine?

A. That is correct.

(Page 24)

All these items are listed as extras and if added to the machine which we gave as the nearest equivalent for the Diesel 50, the International TD-14, that would have an additional price as follows:



Crankcase guard	\$29.75
Radiator guard	42.25
Spark Arrester	4.75
Heavy duty track roller guards	45.00
Front pull hook	16.50

(From the Deposition of Walter Shoemaker on Behalf of the Plaintiff, taken on May 25, 1945, at Washington, D. C.)

[Endorsed]: Filed June 14, 1945. [57]

---

[Title of Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT WILL RELY ON APPEAL

The defendant having lately filed its Notice of Appeal from the judgment of this Court to the Circuit Court of Appeals for the Ninth Circuit, and having designated portions of the record herein to be contained in the record on appeal, does hereby file its statement of the points on which it intends to rely upon appeal.

1. The District Court erred in deciding that plaintiff was entitled to prosecute this action.

2. The District Court erred in deciding that the sale of tractors by defendant to farmers for use in farming were not retail sales and, as such, expressly excluded from the operation of Maximum Price Regulation 136 (8 F. R. 16132) as amended.

3. The District Court erred in deciding that

the used tractors sold by defendant to Thos. Teresi and T. J. Badami were not rebuilt and guaranteed tractors within the meaning of Maximum Price Regulation 136, if that regulation applied to those sales.

4. The District Court erred in granting an injunction against defendant.

5. The District Court erred in rendering judgment against defendant.

HOWE & FINCH.

By NATHAN C. FINCH,

Attorneys for Defendant and  
Appellant.

(Affidavit of Mailing.)

[Endorsed]: Filed Nov. 15, 1945. [58]

---

[Title of Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL

Defendant having lately filed its notice of appeal from the judgment of this Court to the Circuit Court of Appeals for the Ninth Circuit, hereby designates the following portions of the record and proceedings in this case to be contained in the record on appeal:

1. Amended Complaint.
2. Amended Answer to Amended Complaint.

3. Interrogatories to plaintiff.
4. Answers to Interrogatories.
5. Stipulation of counsel dated February 27, 1945, filed April 12, 1945.
6. Motion to Dismiss filed April 12, 1945.
7. Order for Judgment.
8. Findings of Fact and Conclusions of Law.
9. Judgment.
10. Notice of Appeal and date of its filing.
11. Designation of contents of record on appeal.
12. Statement of points upon which appellant will rely on appeal.
13. Plaintiff's exhibits 1-A to 1-H, inclusive.
14. Plaintiff's Exhibit 3.
15. Defendant's Exhibit H.
16. Testimony of Verna M. Smith, Rep. Tr. pages 25 to 49, line 22.
17. Testimony of Verna M. Smith, Rep. Tr. pages 132 to 140.
18. Testimony of J. R. Delfino, Rep. Tr. page 72, line 11 to page 77, line 24.
19. Testimony of Cyril M. Odlin, Rep. Tr. pages 140 to 146. [59]
20. Testimony of Austin Clapp, Rep. Tr. pages 174 to 177, line 20.

21. The following portions of Plaintiff's Exhibit 5, deposition of Walter Shoemaker:

On page 19 thereof, the following testimony:

“Q. In your opinion, Mr. Shoemaker, what is the nearest equivalent machine to a Caterpillar Tractor Model 50 Diesel?”

A. We found that the Caterpillar Model 50 was an obsolete machine, which had a drawbar horsepower of 56.03 and that its nearest equivalent current machine is an International TD-14, with a drawbar horsepower of 54.04, and with a current selling price of \$4,3250.00 f.o.b. factory;”

On page 24, the following testimony:

“All these items are listed as extras and if added to the machine which we gave as the nearest equivalent for the Diesel 50, the International TD-14, that would give an additional price as follows:

Crankcase guard	\$29.75
Radiator guard	42.25
Spark Arrestor	4.75
Heavy duty track roller guards	45.00
Front pull hook	16.50”

On page 21, the following testimony:

Q. Do you have on file the manufacturer's maximum published price for Cletrac Tractor Model AG?

A. Yes, the Cletrac Tractor Model AG is a current machine and the file price with OPA is \$1,745.00.

Q. And that price is the new base price of the machine? [60]            A. That is correct.

HOWE & FINCH.

By NATHAN C. FINCH,  
Attorneys for Defendant and  
Appellant.

(Affidavit of Service by Mail.)

[Endorsed]: Filed Nov. 15, 1945. [61]

---

[Title of District Court and Cause.]

COUNTER DESIGNATION OF CONTENTS  
OF RECORD ON APPEAL

Plaintiff and appellee hereby counter designates the following portions of the record and proceeding in this case to be contained in the record on appeal:

1. Testimony of J. R. Delfino contained in lines 22 and 23 on page 82 of the reporter's transcript of testimony.

2. Stipulation of counsel dated February 27, 1945, and filed March 3, 1945.

(Signed)            HERBERT H. BENT,  
Attorney for Plaintiff and  
Appellee.

[Endorsed]: Filed Nov. 23, 1945. [62]

[Title of Court and Cause.]

ADDITIONAL DESIGNATION BY  
DEFENDANT AND APPELLANT

Defendant and appellant to the United States Circuit Court of Appeal for the Ninth Circuit hereby designates the following additional portions of the record and proceedings in this case to be contained in the Record on Appeal:

(1) Testimony of J. R. Defino contained on page 81, line 21, to page 82, line 25, of the Reporter's Transcript of testimony.

HOWE & FINCH.

By NATHAN C. FINCH,

Attorneys for Defendant and  
Appellant.

(Affidavit of Mailing of Copy.)

[Endorsed]: Filed Nov. 27, 1945. [63]

---

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, It Is Hereby Ordered that the appellant herein may have to and including January 7, 1946, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: November 27, 1945.

LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed Nov. 27, 1945. [64]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, It Is Hereby Ordered that the Appellant herein may have to and including January 17, 1946, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: January 4, 1946.

LOUIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed Jan. 4, 1946. [65]

---

District Court of the United States

Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 65 pages, numbered from 1 to 65, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of Chester Bowles, Administrator, Office of Price Administration, Plaintiff, vs. Mechanical Farm Equipment Distributors, Inc., a corporation, No. 23546 G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and

certifying the foregoing transcript of record on appeal is the sum of \$20.00 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 15th day of January, A.D. 1946.

[Seal]

C. W. CALBREATH,  
Clerk.

M. E. VAN BUREN,  
Deputy Clerk. [66]

---

[Endorsed]: No. 11227. United States Circuit Court of Appeals for the Ninth Circuit. Mechanical Farm Equipment Distributors, Inc., a corporation, Appellant, vs. Chester Bowles, Administrator, Office of Price Administration, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed January 15, 1946.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.



In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11,227

CHESTER BOWLES, Administrator, Office of  
Price Administration,

Appellee,

vs.

MECHANICAL FARM EQUIPMENT DISTRIBUTORS, INC.,

Appellant.

STATEMENT OF POINTS UPON WHICH APPELLANT WILL RELY ON APPEAL

To the Clerk of the Above-Entitled Court:

The record on appeal having been transmitted by the Clerk of the District Court to the Clerk of the United States Circuit Court of Appeals for docketing, the appellant submits herewith its statement of the points upon which it intends to rely upon appeal.

1. The District Court erred in deciding that plaintiff was entitled to prosecute this action.

2. The District Court erred in deciding that the sales of tractors by defendant to farmers for use in farming were not retail sales and, as such, expressly excluded from the operation of Maximum Price Regulation 136 (8 F. R. 16132) as amended.

3. The District Court erred in deciding that the used Caterpillar tractor sold by defendant to Thos.

Teresi and the used Cletrac "AG" tractor sold by defendant to T. J. Badami were not rebuilt and guaranteed tractors within the meaning of Maximum Price Regulation 136, if that regulation applied to those sales.

4. The District Court erred in granting an injunction against defendant.

5. The District Court erred in rendering judgment against defendant.

HOWE & FINCH.

By NATHAN C. FINCH,

Attorneys for Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed January 18, 1946. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER WAIVING PRINTING OF ORIGINAL  
EXHIBITS

Good cause therefor appearing, It Is Ordered  
that the following original exhibits, viz.:

Plaintiffs 1-A to 1-H, inc., and 3, need not be  
printed, but will be considered by this Court in their  
original form .

FRANCIS A. GARRECHT,

Senior United States Circuit

Judge.

Dated: San Francisco, Calif., January 26, 1946.

[Endorsed]: Filed January 28, 1946. Paul P.  
O'Brien, Clerk.

